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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

14 CR 203 (RJS)

5 DARRELL BENNETT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 December 19, 2014
2:20 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 EUN YOUNG CHOI

Assistant United States Attorney

18 PEGGY CROSS-GOLDENBERG

19 Attorney for Defendant

20 ALSO PRESENT: KATE HADLEY, Defense Paralegal

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1 THE COURT: This is United States versus Bennett. Let
2 me just take appearances.

3 For the government?

4 MS. CHOI: Good afternoon, Your Honor. Eun Young
5 Choi, on behalf of the government.

6 THE COURT: Ms. Choi, good afternoon.

7 And for the defendant?

8 MS. CROSS-GOLDENBERG: The Federal Defenders of
9 New York, by Peggy Cross-Goldenberg, for Mr. Bennett. I'm
10 joined at counsel table by Kate Hadley, a paralegal in our
11 office. Good afternoon, Your Honor.

12 THE COURT: Good afternoon to each of you. Thank you.

13 We have some friends and family members here as well,
14 Ms. Cross-Goldenberg?

15 MS. CROSS-GOLDENBERG: Yes, Your Honor. If I may, I
16 can introduce them now.

17 THE COURT: Sure.

18 MS. CROSS-GOLDENBERG: Mr. Bennett's mother, Wanda
19 Clark, is here; his aunt, Tina Davis; his friend, Jordan
20 Powell, who the Court may remember from the day of
21 Mr. Bennett's guilty plea --

22 THE COURT: Yes.

23 MS. CROSS-GOLDENBERG: -- his friend, Charese Nahay;
24 another friend, Ashley Shacklehorn; and another friend, Andrew
25 March. All of these individuals, Your Honor, have written to

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1 the Court. Their letters were attached to my submission, and
2 they all wanted to be here to support Mr. Bennett.

3 THE COURT: Thank you, all, for being here. It is a
4 public courtroom, so everyone is welcome here, but I'm sure
5 your presence means a great deal to Mr. Bennett. And thank you
6 for writing letters. I think letters are very helpful in all
7 cases, really. I only get a short time to spend with a
8 defendant, and the time I spend with the defendant is very
9 artificial in a sense. It's in a courtroom, so I don't really
10 get to know the person. So letters from people who do know the
11 person are very, very helpful. So thank you for taking the
12 time, thank you for being here today.

13 We are here for sentencing. Mr. Bennett pled guilty
14 before me back in September. I want to go over with the
15 parties what I have reviewed in connection with sentencing, and
16 if I've left anything out, of course, let me know.

17 I have, first of all, reviewed the transcript of the
18 guilty plea proceeding. I presided over it, but I think it's a
19 good policy to refresh oneself with what was said and what went
20 on. So I've done that. I've also reviewed the presentence
21 report prepared by the probation department. That's a report
22 dated November 24th. It is a 26-page single-spaced submission
23 that includes a sentencing recommendation of 97 months.

24 I have also have the submission of
25 Ms. Cross-Goldenberg dated December 5th. It is a

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1 characteristically thorough and lengthy -- they're not all this
2 lengthy, but characteristically thorough -- 23-page
3 single-spaced submission that includes numerous attachments,
4 including letters that I've already alluded to, other things as
5 well. I'm not going to itemize what they are just because it's
6 publicly docketed, I've read everything attached, so thank you.

7 I have reviewed the victim impact statements that were
8 enclosed with the November 19th letter from Wendy Olsen Clancy,
9 who is the victim witness coordinator at the United States
10 Attorney's Office. I have also reviewed the attachments to the
11 December 5th, 2014 letter of Ms. Olsen Clancy that includes a
12 restitution request for one of the victims who was depicted in
13 the videos that were taken off of the computer of Mr. Bennett.
14 That's a voluminous set of material.

15 I've also reviewed the government's sentencing
16 memorandum, which is dated December 12th. It is a 20-page
17 double-spaced submission. It also includes a number of
18 attachments that I have reviewed also.

19 So I think that's everything I have received in
20 connection with sentencing. Have I left anything out?

21 MS. CHOI: The government does not believe so, Your
22 Honor.

23 MS. CROSS-GOLDENBERG: I don't think so, Your Honor.

24 THE COURT: All right. Then I guess -- I don't think
25 the parties have really responded to the restitution request.

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1 MS. CHOI: Yes, Your Honor. That was one of the
2 matters that I was going to bring to the Court's attention.
3 Obviously, restitution is mandatory under 2259(a). The
4 government has had the opportunity to review the December 5th
5 materials. We have started to talk about that issue with
6 defense counsel to try to come up with a restitution number
7 that would potentially satisfy any further litigation on the
8 question. So we would request that we'd be granted the 90-day
9 continuance, as is allowed under the statute, to allow us to
10 continue those negotiations and try to see if it's possible to
11 come up with an agreed upon restitution figure. I think the
12 application of Paroline factors is sort of uncharted territory,
13 so we want to sure that we're getting the restitution figures
14 right, Your Honor.

15 THE COURT: And no objection to that?

16 MS. CROSS-GOLDENBERG: No objection, Your Honor. We
17 received this request after my sentencing submission had
18 already been submitted.

19 THE COURT: Right.

20 MS. CROSS-GOLDENBERG: And as I have mentioned to
21 Ms. Choi, it's not clear to me how this individual fits into
22 this case, and so that would be the first thing that we would
23 have to determine. Even in the cover letter from the
24 attorneys, they sort of say presumably he's a victim here. And
25 so I went through the list of videos that the government

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1 attached to its sentencing submission and didn't see the ones
2 that appeared to be referenced in this letter. So that's the
3 first thing we'll have to work out. And then if the parties
4 can come to some agreement, if restitution is appropriate, on a
5 number, I think we can submit that to the Court in plenty of
6 time for the Court to enter restitution in the 90 days.

7 THE COURT: All right. Yes, I had the same reaction
8 that you did. It wasn't exactly clear to me where the victim
9 seeking restitution exactly lines up in what's referenced in
10 the presentence report, so I think that would be worth nailing
11 down.

12 Similarly with the victim impact statements, these are
13 clearly victim impact statements that appear to have been
14 prepared in connection with other sentencings, and not
15 surprisingly, where there are videos or photos that are shared,
16 there might be multiple sentencings at which the victim
17 impacted statement is relevant, and so these are not tailored
18 to this case. It's not exactly clear to me which files, or
19 videos, or items seized from the computer are referenced by
20 these victim statements.

21 MS. CHOI: Your Honor, just for some clarity on that
22 question, if Your Honor is curious, I can explain the procedure
23 by which these things are generally generated. It's through a
24 national clearinghouse.

25 THE COURT: Yes.

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1 MS. CHOI: But Ms. Cross-Goldenberg has brought this
2 to my attention. I didn't double-check with NCMEC to figure
3 out precisely which videos align with these. I would just say,
4 though, Your Honor, that the videos that we have attached here
5 are simply some of the suspected CP videos there are also child
6 pornography videos. There are other images that were also
7 recovered from the defendant's computer that weren't included
8 in this list. So that may be part of the explanation.

9 THE COURT: But there are no objections with respect
10 to the victim impact statements at this point,
11 Ms. Cross-Goldenberg?

12 MS. CROSS-GOLDENBERG: I think, Your Honor, to the
13 extent the Court has articulated -- and I was going to talk
14 about this a little later -- it's not so much an objection, the
15 Court's already read them obviously, I can't unring that bell,
16 but I do note that they contain sort of a disclaimer, in fact,
17 an explicit disclaimer that says there should be further
18 follow-up to make sure that they actually apply in a given
19 case, and I haven't seen any follow-up on that. As far as I
20 know, the government hasn't produced to me any sort of
21 follow-up that necessarily links these letters to this case.

22 And I think, as the Court correctly notes, these
23 letters clearly predate Mr. Bennett's conduct in this case.
24 They're clearly aimed at the individual who made the videos.
25 And so in terms of what they actually tell us for this

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1 sentencing, I don't think that it's very much.

2 THE COURT: Well, they certainly tell us that there
3 are victims to these crimes, and that the people depicted on
4 these videos are real people, real children, who were
5 brutalized and violently, violently raped. So that, we do
6 know. It's hard for me to know which -- there are redactions,
7 too, so it's hard to know exactly how they link up to what's
8 referenced in the presentence report. So it's hard for me to
9 know exactly what they relate to. They talk about a particular
10 series that includes multiple victims, but maybe, you know,
11 Ms. Choi, what series that's referenced in the victim impact
12 statements is where it connects to the presentence report.

13 MS. CHOI: I'm not sure that they do connect to the
14 presentence report, Your Honor, and I think there needs to be a
15 little clarity about how the system works. There is a national
16 clearinghouse that's relied upon in these type of prosecutions.
17 When I referred to NCMEC, it's, I believe, the National Center
18 for Missing & Exploited Children. They keep a database of
19 identified victims that have been identified primarily
20 domestically by law enforcement that appear in certain child
21 pornography videos.

22 In my experience, from having prosecuted these cases,
23 very few of those -- a small percentage of the total videos
24 that are exposed in any given child pornography case are
25 actually -- contain actual identified victims for which there

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1 would be anything on file, including a victim statement.
2 Oftentimes these victim statements aren't tailored to the
3 particular defendant because they're filed when the statements
4 were made in other contexts, but they're supposed to give the
5 Court some guidance as to the impact that this particular crime
6 had on these victims. In fact, I would say that this is -- the
7 December 5th submission is the first time I've seen something
8 that's particularly tailored to a defendant at issue.

9 But I will double-check on that.

10 THE COURT: Paragraph 21 says that, "According to
11 information from the National Center for Missing & Exploited
12 Children database, the images possessed by the defendant
13 included 11 different series depicting known child victims."

14 MS. CHOI: Correct.

15 THE COURT: "The series may contain images of more
16 than one victim. Three victim impact statements furnished by
17 the U.S. Attorney's Office will be attached to the Court's copy
18 of the final presentence report."

19 So I assume that's a reference to what I got from
20 Ms. Olsen Clancy, and that the videos that are identified at
21 pages 5 through 7 of the presentence report include the 11
22 different series that depict known child victims, and that the
23 victim impact statements are from a subset at least of those
24 series.

25 MS. CHOI: Your Honor, I think that the videos that

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1 are described at pages 5 through 7 of the PSR are actually the
2 specifically videos for which the reviewing case agent saw the
3 images and explained what they were in written form so that we
4 could proceed in prosecuting on that basis. They don't
5 necessarily link up particularly to those victim impact --

6 THE COURT: Why do you say that? This says, "The
7 images possessed by the defendant include 11 different series
8 depicting known child victims." You don't think they link up?

9 MS. CHOI: Well, because, Your Honor, this is only a
10 subset, the 5 through 7 is only a subset of the total number of
11 child pornography videos that were on the defendant's computer,
12 because there were 79, I believe, videos that were there. So
13 what I'm saying is, I don't know if these particular victim
14 impact statements match the videos that are on pages 5 through
15 7 as the ones that had been also reviewed by the case agent or
16 if they match up by title and by -- I think they also use other
17 electronic identifiers to the listed known series that existed
18 in the NCMEC database.

19 But, again, I'll go and double-check this. I think --

20 THE COURT: But double-check it when? Because
21 sentencing is going forward today. We can do restitution
22 later.

23 MS. CHOI: Yes, Your Honor. I think with regard to
24 the December 5th issue, which is restitution, that's one thing.
25 I think, Your Honor, with regard to the victim statements that

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1 are in the earlier submissions, the three that are in the known
2 series, I would say this, that they are depictions of what
3 happens in victimization in these child pornography cases. I
4 know, Your Honor, I believe in other sentencing of child
5 pornography cases has made references to victim impact
6 statements as illustrative of what happens to a child even if
7 it was not the child that was victimized as depicted in the
8 videos for that particular defendant.

9 So we would say that, Your Honor, you can move forward
10 on the question of the nature of the offense from gleaning from
11 pages 5 through 7 of the PSR the descriptions of what those
12 particular videos are as, I think, self-sufficient with regard
13 to what depictions of violence there are and with the
14 understanding that presumably, given what was happening to
15 those children, those children were also victimized. The
16 children for which there is no NCMEC statement were also
17 subject to victimization through the creation of that child
18 pornography and its distribution.

19 THE COURT: It wasn't clear to me that these were
20 supposed to be illustrative as opposed to the actual
21 individuals who were depicted in videos that were found on the
22 computer. You're not sure about that?

23 MS. CHOI: Your Honor, I have no reason to believe
24 that they're not. Ms. Cross-Goldenberg just brought to my
25 attention that she thinks there may be some problem with this.

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1 I will go back to NCMEC and double-check to make sure that we
2 have the correct videos, but they are consistent with the NCMEC
3 information that I had received from the agents that said that
4 the Sponge Bob series was one series that had been identified
5 as being on the defendant's computer, so I have no reason to
6 believe that that is an inaccurate -- that the letters are not
7 matching up to those victims. I'm just trying to clarify that
8 they're not necessarily the videos that are portrayed on pages
9 5 through 7 of the PSR, and I don't know which particular video
10 because when NCMEC makes these identifications, they don't
11 spell out what the title of the video is.

12 THE COURT: Ms. Cross-Goldenberg?

13 MS. CROSS-GOLDENBERG: And I think, Your Honor, as I
14 said, we haven't received any information showing that there
15 actually has been a linkage or any kind of follow-up. When I
16 followed up with probation about this paragraph in the draft
17 presentence report, they didn't provide me with any further
18 information. And I think the way I understand this, there are
19 different levels of identification of files found on someone's
20 computer, so you can look at the name of a file, and it may
21 match the name of a file in a law enforcement database, but
22 that doesn't necessarily mean that the images that are
23 contained in the file match the images of the known victims,
24 for example.

25 So I think that's why the disclaimer precedes all of

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1 these victim impact statements to say don't just assume that
2 this matches. And, of course, here we can't even tell because,
3 as the Court noted, the name of the series is redacted, so
4 there's no way for me to know whether they match up. But
5 there's an instruction that in order to make sure that these
6 victim impact statements apply in your case, you call the case
7 agent, and then that individual actually looks at not the name
8 of the file, but the actual content of the file.

9 And what I'm saying is that I don't think that has
10 been done here. I'm almost certain that probation didn't come
11 to that. I don't think the probation officer has any
12 information about who are the known victims or not. And so I
13 don't think probation went through that exercise of matching
14 people to files.

15 THE COURT: No, I assume the case agent informed the
16 probation officer as to the fact that of the files that were
17 seized from the computer, some of them have been identified,
18 and witnesses have been found that relate to the files that
19 were recovered. That seemed to me the inference to be drawn
20 from what I read.

21 In any event, we'll talk about the presentence report
22 in a minute, but there's no dispute about the accuracy of the
23 descriptions at pages 5 through 7 of the videos; is that right?

24 MS. CHOI: Not from the government, Your Honor. Those
25 were provided to the government -- sorry, to probation by the

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1 government and the case agent.

2 THE COURT: Okay.

3 Ms. Cross-Goldenberg?

4 MS. CROSS-GOLDENBERG: No, Your Honor.

5 THE COURT: Okay. Well, then, let's start with the
6 presentence report. The presentence report has been made
7 available to the parties.

8 And so, Ms. Cross-Goldenberg, you've received a copy
9 and reviewed it with your client?

10 MS. CROSS-GOLDENBERG: Yes, Your Honor.

11 THE COURT: And do you have any objections to what's
12 in the presentence report?

13 MS. CROSS-GOLDENBERG: No, Your Honor, other than to
14 one of the recommended conditions of supervision at the end,
15 but we can talk about that when we get there.

16 THE COURT: Okay.

17 Ms. Choi, you've received a copy of the presentence
18 report. Do you have any objections to it?

19 MS. CHOI: Not from the factual descriptions, Your
20 Honor. As set forth in the government's submission, we would
21 submit that the guidelines calculation that's applicable for
22 the enhancement due to the distribution was -- should have been
23 a five-point enhancement under 2G2.2(b)(3)(B) as opposed to the
24 one that probation put in, which is 2G2.2(b)(3)(F).

25 THE COURT: So we'll talk about that in a minute.

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1 So let me just remind Mr. Bennett, and perhaps explain
2 to others who maybe weren't here on the day of the guilty plea,
3 that there are certain factors that a judge is required to
4 consider before imposing a sentence. And those factors include
5 the history and characteristics of the defendant. I have to
6 obviously consider the entire person, not just the crime. I
7 have to consider this person that I am imposing a sentence on,
8 I have to make sure that the sentence is tailored to the
9 person, that there's a full appreciation of the human being in
10 all his complexity and uniqueness. So that's important.

11 Another factor that the judge has to consider, of
12 course, includes the seriousness of the crime. This is a very
13 serious crime, and the judge has to consider the circumstances
14 and facts relating to this crime. The fact that this is a
15 crime that involves children, children who were brutally -- in
16 some cases, brutally raped, viciously raped -- I mean any
17 sexual activity with a ten-year-old or a child is rape by
18 definition, but some of the images that are described in the
19 presentence report involve violent acts perpetrated against a
20 child who's in obvious pain and distress, and that's
21 particularly heinous. So the sentence has to reflect the
22 seriousness of this crime and has to provide a just punishment
23 for this crime. It has to promote respect for the law.

24 Another factor that judges have to consider is the
25 need to deter or discourage future conduct of this kind. The

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1 hope is that by imposing a sentence in one case, the judge will
2 impress upon the defendant that this is behavior that can't be
3 repeated, but, also, hopefully impress upon a larger public
4 that this is intolerable, and that the penalties will be great,
5 and hopefully the result will be that there is less future
6 criminal conduct, that people learn from it and change their
7 behavior as a result of it. That's the hope. That's an
8 important factor that judges have to consider. It's something
9 Congress has said courts have to take into account.

10 Other factors include the defendant's needs while in
11 custody, so the need for mental health treatment, or substance
12 abuse treatment, or counseling. There are different needs that
13 defendants have that need to be addressed while they're in
14 custody, and courts need to take that seriously.

15 Another factor that courts have to consider is
16 something called the United States Sentencing Guidelines, and,
17 Mr. Bennett, I'm sure you'll recall, we talked about the
18 guidelines. I know Ms. Cross-Goldenberg has gone over these
19 with you. But for those who may not have been here, the
20 Sentencing Guidelines are a big book. This is a manual
21 prepared by a commission that includes judges and lawyers,
22 experts in the field of criminal law. And the book is designed
23 to help judges like me decide what will be an appropriate
24 sentence, and so for every crime or type of crime, there's a
25 chapter in this book, and the judge is instructed to go to that

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1 chapter and to make certain findings.

2 So depending on those findings, the judge assigns
3 points. It's sort of like accounting in many ways. It's
4 adding points, and subtracting points, and ultimately coming up
5 with a number, and that number is referred to as the offense
6 level.

7 There is then another chapter in this book that
8 relates to criminal history, and not surprisingly, people who
9 have gone to jail before for crimes will typically be treated
10 more harshly than a person who has no prior criminal
11 convictions. So the judge, again, is instructed to go to that
12 chapter, make findings as to whether there are prior
13 convictions; if so, when and for how long, and depending on the
14 answers to those questions, the judge assigns points, adds
15 them, and ultimately comes up with another number, and that
16 number is referred to as the Criminal History Category.

17 And there are six Criminal History Categories.
18 Category I is the lowest and least serious, and Category VI is
19 the highest and most serious. So once the judge has made those
20 two findings, the offense level and the Criminal History
21 Category, the judge is instructed to go to the back of this
22 book where there's a table or a grid -- you can't really see it
23 from here, but there's a column here on the far left, and
24 that's the offense level column, and the judge goes down that
25 column, stopping when he or she gets to the number; that is,

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1 the offense level in the particular case.

2 The judge then goes across from left to right these
3 other columns which relate to the Criminal History Category,
4 stopping where the judge reaches the appropriate Criminal
5 History Category. And where the judge's finger finally rests,
6 well, that is the range that in the view of the commission that
7 prepares this book would be appropriate. It's a range in terms
8 of months.

9 And so, ultimately, the judge doesn't have to follow
10 this book, the judge can go higher or lower, but the judge does
11 have to consider the book and make findings under this manual.

12 Finally, the last factor that judges are instructed to
13 consider is the need to avoid what's often referred to as
14 unwarranted sentencing disparities between similarly situated
15 individuals. That's basically -- this is the point, which is
16 that judges, before imposing sentence, should take a step back
17 to make sure that the sentence imposed in a particular case is
18 in line with sentences imposed on other defendants who are
19 convicted of similar crimes, who have similar criminal
20 histories. It would be wrong, and probably would promote
21 disrespect for the law, if some people got very high sentences,
22 and others quite low sentences, just by virtue of who the judge
23 was. And so judges have to make sure that the sentences they
24 impose are roughly in line with sentences imposed more
25 generally for similar conduct in similar circumstances,

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1 recognizing that no two people are exactly alike, no two cases
2 exactly alike. So those are the factors that I have to
3 balance, those are the things that judges are required to
4 consider and take into account in fashioning a sentence.

5 We are going to spend a little bit of time talking
6 first about the Sentencing Guidelines and how they apply in
7 this case. After that, we'll talk about some of the other
8 factors, but we'll start with the presentence report, which
9 lays out the probation department's view of the guidelines in
10 this case. So the probation department concludes that the base
11 offense level is level 18 pursuant to Section 2G2.2 of the
12 guidelines.

13 There is then a two-level increase because the
14 material that the defendant possessed involved a prepubescent
15 minor or a minor who had not attained the age of 12 years, so
16 that's a two-level increase pursuant to Section 2G2.2(b)(2).
17 The presentence report then recommends a two-level increase
18 because the offense involved the distribution of materials
19 described in Sections (a) through (e) of the guideline section,
20 so that's a two-level increase. That's a disputed fact, we're
21 going to come back to that one.

22 There is then a four-level increase because the
23 material that the defendant possessed portrays sadistic or
24 masochistic conduct or other depictions of violence. So that's
25 a four-level increase pursuant to Section 18 -- well, Section

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1 2G2.2(b)(4) of the guidelines.

2 There is then another two-level increase because the
3 offense involved the use of a computer or interactive computer
4 service for the possession, transmission, receipt, or
5 distribution of the material. So that's two levels pursuant to
6 2G2.2(b)(6). And then a five-level increase because of the
7 number of images. In this case, the images are approximated to
8 be almost 6,000. 600 or more is what yields a five-level
9 increase, so that would be a level 33.

10 There is then a reduction of three levels because
11 Mr. Bennett pled guilty in advance of trial, he acknowledged
12 and accepted responsibility for his crimes, and so that merits
13 a three-level reduction pursuant to Section 3E1.1(a) and (b).

14 So I guess the only dispute, I think, between the
15 parties is with respect to Section 2G2.2(b)(3). Is that
16 correct? Have I characterized this accurately?

17 MS. CHOI: I believe so, Your Honor.

18 THE COURT: Ms. Cross-Goldenberg?

19 MS. CROSS-GOLDENBERG: I'm sorry, what was --

20 THE COURT: The only dispute is with respect to
21 paragraph 28 --

22 MS. CROSS-GOLDENBERG: Right.

23 THE COURT: -- and the enhancement under subsection
24 (b)(3), correct?

25 MS. CROSS-GOLDENBERG: Yes, Your Honor.

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1 THE COURT: Okay. So let's, then, talk about that.

2 The government has the burden to establish by a
3 preponderance that the facts relating to that subsection are
4 appropriate, that the enhancement, therefore, is appropriate.

5 Go ahead, Ms. Choi, I'm happy to hear you.

6 MS. CHOI: Your Honor, I think it's set forth in the
7 government's submission at pages 5 through 6. I think that the
8 application notes make plain that the five-level enhancement
9 applies to any transaction, including bartering or in-kind
10 transaction that is conducted for a thing of value, but not for
11 profit, and then further defines a thing of value as anything
12 of value or consideration, which could include child
13 pornographic material received in exchange for other child
14 pornographic material bartered in consideration for the
15 material received.

16 And I think that that is illustrated -- the
17 applicability of this guidelines range is illustrated by the
18 means in which the defendant received the child pornography by
19 his own admission. I don't think it's in dispute that he was
20 using a computer program known as GigaTribe, which I think the
21 government's submission goes into great length in explaining,
22 in accordance with the Second Circuit's decision in Ryan Gold.
23 And I think that -- the way in which that computer system is
24 set up is, you need to share files in order to get files from
25 others.

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1 In this case, as the attachments show, the defendant
2 shared his password with numerous other people on numerous
3 occasions, including the undercover agent from Homeland
4 Security, that transaction which formed the basis for the
5 complaint, as well as the government has learned with an FBI
6 agent.

7 And in trading those passwords, I would also note that
8 it is clear that the defendant in the statements to the defense
9 expert, Dr. Bardey, made plain that he understood that the way
10 that this worked is that this is a sharing environment on
11 GigaTribe, and that if he wasn't sharing the images, it
12 wouldn't have been spread in this way.

13 I think the bartering nature of GigaTribe, the sharing
14 of the passwords, and the defendant's own actions clearly
15 establish that bartering in kind occurred both with regard to
16 the child pornographic materials at issue here and other things
17 that Mr. Bennett shared with others by sharing his password on
18 that particular service. And so for those reasons, I think
19 that the guidelines enhancement applies here.

20 THE COURT: All right.

21 Ms. Cross-Goldenberg?

22 MS. CROSS-GOLDENBERG: Thank you, Your Honor.

23 Let me start out by saying that I think that we're
24 even having this argument sort of supports our position and
25 underscores the Second Circuit's decision in Dorvee that the

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1 guidelines here are not entitled to deference.

2 THE COURT: We'll get to deference in a minute, but I
3 do have to do a calculation as an initial matter.

4 MS. CROSS-GOLDENBERG: I understand that, Your Honor.

5 And I think, as I said, as an initial matter, it just
6 underscores this would take us to a place four years over the
7 statutory maximums. So I think when the Court considers that,
8 and the Court considers the view of the probation department,
9 and the Court considers the conduct that, as the Second Circuit
10 says, is inherent in almost every one of these kinds of cases,
11 this isn't the sort of case that would warrant that high
12 five-level enhancement based on actual bartering and trading.

13 As the Court can see, I know the government attached
14 the chats to their sentencing submission, and there are not
15 sort of explicit requests for particular types of child
16 pornography or particular files. It's very rapid fire, what's
17 your password, what's your password, what's your password,
18 what's your password, and it's not so much like setting up
19 bartering explicitly, I will give you this if you give me this.

20 So I think the two levels covers it on the facts of
21 this case. The chats, which I'll go into a little later, there
22 are questions where sometimes people say what are you into or
23 what are you looking for. There are also conversations where
24 people tell Mr. Bennett, you know, is that all you had, as if
25 like his stuff wasn't good enough, or different enough, or

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1 wasn't new enough for them, and so I think on what we know, I
2 don't think the Court can make a finding, for example, that
3 he -- by giving his password, he gave somebody else new child
4 pornography that they didn't previously have access to or that
5 they were able to access from --

6 THE COURT: I think the point here, what we ought to
7 be focused on, is the language of the enhancement and the
8 application note. So we're talking about distribution for the
9 receipt or expectation of receipt of a thing of value.

10 So the distribution occurred, clearly. It's whether
11 it was done for the receipt or the expectation of receipt of a
12 thing of value. So no evidence that money changed hands, so
13 the thing of value that the government is arguing is what, the
14 expectation that he would receive reciprocal child pornography
15 from other users of the site?

16 MS. CHOI: That's correct, Your Honor.

17 THE COURT: And what's the evidence of that?

18 MS. CHOI: Your Honor, I think that if you go to page
19 4 of Government Exhibit D to the sentencing submission --

20 THE COURT: Wait, wait, let me get there.

21 Okay, yes?

22 MS. CHOI: I think it's a little difficult to read
23 because it is quite small, but if you see the discussions that
24 Getitin2012, which is the defendant's user name, has with the
25 plumber, which --

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1 THE COURT: Page 4?

2 MS. CHOI: Yes, beginning at approximately line 180.

3 THE COURT: 180, with the plumber?

4 "Hello. What are you into?

5 "Hi. Password. Hi, what's up? I'm in teens, boys
6 and stuff. What about you? Three to fifteen, B//B, M//B,
7 B//G, pass for pass."

8 That's what you are referring to?

9 MS. CHOI: Yes, Your Honor. And I think this is just
10 an example of how this systems works. It's that users can
11 speak with one another and exchange passwords with a query as
12 to what they have to offer. And here, the defendant is saying,
13 I'm into teens, boys and stuff is his interest of what child
14 pornography he would like, and the plumber, this other user, is
15 saying that he likes people who are between the ages of three
16 to fifteen, and I believe that the B//B is boy on boy, M//B is
17 man on boy, and then B//G is boy on girl. So he's explaining
18 the type of child pornography he's seeking.

19 THE COURT: Pass for pass, means you give me your
20 password, I'll give you my password.

21 MS. CHOI: Correct, Your Honor.

22 THE COURT: "Yeah. Mine is 'fun' LOL. Mine is
23 'FFK25.'" So it's an exchange of passwords, is what you are
24 saying?

25 MS. CHOI: Yes, Your Honor. And I think that's

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1 illustrative of the way in which the bartering occurs on
2 GigaTribe, you share passwords, you get access to other
3 people's files. In this case, that's how the defendant got
4 access to child pornography and distributed child pornography.

5 THE COURT: Okay. Ms. Cross-Goldenberg, do you
6 disagree with any of that?

7 MS. CROSS-GOLDENBERG: I think, Your Honor, when --
8 especially where a guideline sets up different gradations of
9 enhancements for a particular type of conduct, and the question
10 here is should we jump to the fifth level, I think this falls
11 clearly within the Second Circuit's opinion in Dorvee, that,
12 no, because it doesn't leave us any room to distinguish between
13 people who are actually bartering and trading and getting
14 things of value.

15 Now, I understand the government disagrees, the Court
16 may disagree --

17 THE COURT: Well, I think you've moved to a different
18 argument. Right now, I'm just trying to figure out whether the
19 language of the application note, as informed -- the language
20 of the guideline, as informed by the application note, would
21 treat this kind of trading of passwords and access to what each
22 user has in their files, it constitutes a thing of value, as
23 described in the sentencing commission guidelines. And it
24 seems to me a thing of value means anything of valuable
25 consideration. For example, in a case involving the bartering

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1 of child pornographic material, the thing of value is the child
2 pornographic material received in exchange for other child
3 pornographic material bartered in consideration for the
4 material received.

5 This exchange of passwords, after a brief exchange as
6 to the interests of the users, would seem to be exactly what
7 the application note has in mind. Do you disagree with that?

8 Your response is that, well, we shouldn't be following
9 the guidelines, that the guidelines are, for a number of
10 reasons, not appropriate. We'll get to that argument in a
11 minute. But in terms of just interpreting the language here,
12 are you suggesting that this isn't an exchange of child
13 pornographic material through the exchange of passwords?

14 MS. CROSS-GOLDENBERG: I'm saying, Your Honor, that in
15 light of the guidelines as a whole, and in light of the actual
16 facts of this case, I don't think the application of that
17 enhancement is appropriate here, and neither did probation.

18 THE COURT: Well, without an explanation. Probation
19 didn't really explain anything.

20 MS. CROSS-GOLDENBERG: Well, the government, as -- I'm
21 not sure, I'd have to go back to the end of the presentence
22 report, but I don't think they objected at the time, and so I
23 don't think there was a call for probation to explain that any
24 further. And so -- you know, this is how a presentence report
25 normally reads, unless there's reason for them to further

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1 explain something.

2 THE COURT: But, look, I'm not bound by probation's
3 view on this, and so I think the issue is -- I think this is
4 teed up now, I don't think the government's waived the
5 argument. It's certainly in their sentencing submission to me.
6 Look, I think a fair reading of the guideline language and the
7 application note makes clear that what went on here would fall
8 under the definition of thing of value under 2G2.2(b)(3). So I
9 think the enhancement is warranted under the guidelines.

10 So with that finding, then, we are at 18 plus two,
11 plus five, plus four, plus two, plus five, is, I think, 36.
12 Yeah, 36, minus three for acceptance, puts us at level 33.

13 There's no dispute that Mr. Bennett is in Criminal
14 History Category I, so according to the guidelines, the range
15 is 135 to 168. That's about 11 years to 14 years or so. So 11
16 to 14 years, which is a long time.

17 Now, this is only one factor. There are other factors
18 to be considered, and I know Ms. Cross-Goldenberg has arguments
19 about what sort of weight should be given to these guidelines.

20 I should say up front -- I don't want to prolong the
21 agony, and I think expectations matter in some ways, important
22 ways -- that I generally think that these guidelines are not
23 barbaric at all. I think what's truly barbaric is the images
24 on these videos. We're talking about small children being
25 raped, viciously raped, others being abused in ways that are

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1 less violent perhaps, but are still clearly abuse, and we're
2 talking about not just a few of these, we're talking about
3 dozens, hundreds, thousands of these images that were not just
4 possessed, not just viewed, but shared as part of a network.
5 Really, that's what the sharing software and these chats are
6 designed to do, to enable people to find like-minded
7 individuals to share this kind of material. This is brutal,
8 and there are real victims to this, and I think nobody could
9 watch this and not know that there are real victims to this.
10 And I think a society has to be able to articulate outrage and
11 has to be able to seek some deterrence, both individual and
12 more broadly general, to send the message this just can't be
13 tolerated.

14 So I have to say, I'm not even sure that a
15 below-guidelines sentence is appropriate. I know there are a
16 lot of other factors to discuss, and I say that respectfully
17 because I think that Mr. Bennett is in many ways a very
18 admirable man and a talented man, but this crime is a pretty
19 terrible crime. Mr. Bennett could have been charged with
20 something far more serious that would have mandatory minimums
21 perhaps.

22 So, in any event, I just want to give you a sense as
23 to where I'm starting from. I think it's only fair to do that.
24 I don't want people to be shocked at the end of the process
25 because this can be a very emotional process, and I understand

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1 that.

2 So, Ms. Cross-Goldenberg, I'm happy to hear from you
3 on any of the points raised in your submission or elsewhere.

4 MS. CROSS-GOLDENBERG: Yes. Can I just have a moment?

5 THE COURT: Absolutely, sure.

6 (Pause)

7 MS. CROSS-GOLDENBERG: Thank you, Your Honor. And I
8 appreciate the Court laying out its instincts at the outset.

9 I do have many things I want to say. I know I've
10 already submitted a lengthy submission, but there is a lot to
11 say about this young man. And I know the Court has heard not
12 just from me, but from his friends and family, and I hope that
13 the Court can recognize that this sort of case, in particular,
14 is the kind of case where an arrest and exposure can plummet an
15 individual further into depression, further into isolation and
16 loneliness, and can lead to further danger to the community and
17 problems down the road.

18 And what we have in this case, I think, is a very
19 stark example of where the opposite occurred. Mr. Bennett was
20 able to disclose his conduct to the people closest to him.
21 They supported him in his recovery efforts, and they continue
22 to be here today to support him, which is not something that
23 everybody in his shoes has going for them. And I think, in
24 terms of the Court's instincts and society being entitled to
25 articulate its outrage and seek some return for the conduct, I

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1 think they are one of the things that sets this case apart,
2 because they demonstrate that Mr. Bennett's rehabilitation,
3 which had already begun prior to his arrest and prior to his
4 incarceration, will continue once he is released from custody.

5 I want to highlight some of the points in my letter,
6 Your Honor, but as the Court knows, based on all of the factors
7 to be considered under Section 3553(a), our position is that a
8 sentence of three years' probation is the just and appropriate
9 sentence in this case, and that any further term of
10 incarceration would be greater than necessary on the individual
11 facts of this case, and as they relate to Mr. Bennett, would be
12 greater than necessary to achieve the statutory sentencing
13 objectives.

14 I want to start with his history and characteristics,
15 Your Honor, because there are really two sides to him. And I
16 gave the Court a very lengthy bio in my sentencing submission,
17 I'm not going to recap all of it, but I think the summary is
18 that Mr. Bennett was really exposed to two different worlds as
19 a child. He was exposed to two different worlds that could not
20 be reconciled. When he was with his mother, it was a very
21 church-going, orderly, rule-based world, that he was able to
22 navigate and thrive in. And when he was with his father, it
23 was a much more lewd, highly sexualized atmosphere that
24 involved liquor stores, and sex shops, and the homes where his
25 father was having affairs. And that dichotomy is something

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1 that sort of has persisted with Mr. Bennett, and it really
2 hasn't been something he has been able to delve into until he
3 got into treatment.

4 And I think the sort of stark difference between those
5 two worlds is highlighted in the letters from his parents that
6 I attached to my submission. His mother's letter is very
7 detailed, very not just supportive, but clearly reflects how
8 close she is to her son and how well she knows him, whereas his
9 father's letter doesn't really acknowledge any of these things
10 from Mr. Bennett's childhood that may have led to issues and
11 sort of says, well, we played basketball together, I don't know
12 why -- I don't know where things went wrong. And I think that
13 does kind of reflect the difference in the two worlds that he
14 was living in.

15 Mr. Bennett's life stabilized somewhat when his father
16 got remarried, but he still was living between these two
17 worlds. And as is detailed in Dr. Bardey's report, he did
18 suffer abuse as a child, and that is something that he has not
19 been able to face or reconcile until he entered treatment
20 following his arrest here. He basically had to shut down any
21 of the pain that he faced, pretend he didn't face it, and
22 really pretend that he was this successful, smiling, cheerful
23 person who was getting along fine in life.

24 I think the government's submission really captures
25 what has been missed here in this case. The government sort of

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1 says, well, he overcame all this stuff, he never should have
2 ended up here, and that's just the point, that he didn't
3 overcome all this stuff, and he didn't have a means to overcome
4 it because he never had an outlet, he never had the treatment
5 or the therapy that permitted him to overcome it.

6 And I think it was the shock of the search on his
7 apartment in February of 2013, of his arrest in October of
8 2013, and the help of treatment that he was receiving that
9 would really have allowed him to be rehabilitated, and
10 deterred, and to be in a place where he can move on and not be
11 a risk to anyone.

12 That is -- as I said, that's a brief summary, right.
13 The Court knows about his achievements, all the good things.
14 And I think they are important here, because it does show
15 Mr. Bennett's potential. And, again, as I said, this is the
16 kind of case where an arrest or exposure can sort of plummet
17 someone into darkness. I think the Court has before it
18 Mr. Bennett's track record of perseverance and dedication to
19 his goals. And his goal here is, and has been, to get
20 everything he can out of treatment and to continue to live a
21 law-abiding life, and that's what he did for the 18 months
22 before he was incarcerated.

23 With respect to the nature and circumstances of the
24 offense, Your Honor, we detail in our letter the circumstances
25 that Mr. Bennett found himself in when he was first introduced

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1 to GigaTribe. He was living this -- he was sort of maintaining
2 this dual persona, this dual role of the person trying to lead
3 the perfect life or that appeared --

4 THE COURT: You said 18 months before he was
5 incarcerated?

6 MS. CROSS-GOLDENBERG: Yes, Your Honor.

7 THE COURT: He was arrested -- I thought he was
8 arrested on October 22nd, 2013. You're saying before that, he
9 had --

10 MS. CROSS-GOLDENBERG: Yes, Your Honor. The search in
11 this case took place in February of 2013, the search that
12 recovered the child pornography.

13 THE COURT: Okay.

14 MS. CROSS-GOLDENBERG: At the time of his arrest,
15 there was a subsequent search, a subsequent seizure of his new
16 computer, of his new electronic devices, and there was no child
17 pornography found on them. That's, I think, a huge factor that
18 sets this case apart from many others, and I'll go into that a
19 little bit more as I talk about his progress through the case.

20 But as I said, he was trying to sort of present the
21 persona of someone who was leading the perfect life, but the
22 reality was, he was ill-equipped to deal with the hardships
23 that piled on him at that time. He had his crushing law school
24 debt. He's a Harvard law graduate who can't find a job, which
25 is an incredibly hard thing to sort of face the outside world

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1 with. His grandmother and his grandfather passed away in very
2 short succession. His mother was diagnosed with cancer. He
3 was broken. And that's not any kind of excuse, but to the
4 extent the Court needs to consider the nature and circumstances
5 of the offense, that that's where he found himself when he was
6 introduced to GigaTribe. He was flailing. He did seek
7 treatment for depression, but there is no doubt that this was
8 like the low point of his life.

9 His offense conduct, as the Court has already spent
10 some time discussing, consisted of using the GigaTribe program,
11 which is a peer-to-peer file-sharing, password-protected
12 software, and he accessed and downloaded child pornography
13 using that site. He shared his password with other people,
14 with other users, including, obviously, the undercover, which
15 is what led to his arrest in this case.

16 And I think in his letter to the Court, which I hope
17 the Court has spent some time reviewing, he explains to the
18 Court that at that time, when his life was spiraling out of
19 control, the computer seemed to be something that he could
20 control, and what he accessed or what he did with his computer
21 was a proxy for sort of the flip side of the loss of control
22 over everything in his life.

23 I say that, again, not to make excuses and not to say
24 that the Court should excuse any behavior, but it's critical, I
25 think, for the Court to understand where he was at the time,

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1 because he's no longer there. And I'll talk about that in a
2 couple of minutes.

3 But with respect to the nature and circumstances of
4 the offense, Your Honor, yes, he accessed, and downloaded, and
5 saved the child pornography that he -- or some child
6 pornography that he viewed on the program, and he shared his
7 password with other people so that they could do the same.
8 Now, we don't know, and I don't think we can ever know, and I
9 don't think certainly the government can prove, what child
10 pornography -- my understanding of these sort of circles is
11 there's a limited amount of child pornography, and I don't
12 think there's any reason -- we don't know what new child
13 pornography he exposed other viewers to or what, by trading
14 passwords, he gained or he was able to give to someone else. I
15 think it's clear from the chats, as I said, that it was very
16 sort of bang, bang, like what's your password, what's your
17 password, what's your password, not particularly -- although
18 occasionally, there were maybe a couple of conversations, but
19 not -- the bulk of the conversations are not about specific
20 things.

21 And, in fact, there are other chats that talk about
22 meeting up with kids or what people -- how people are going to
23 entice kids to do things, what people -- telling stories about
24 what people do or want to do with kids. That's all in what the
25 government submitted, and Mr. Bennett played no part in that.

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1 He doesn't answer when people suggest things like that, he
2 doesn't even respond to those sorts of comments or ask any
3 questions.

4 Your Honor, yes, he gave away his password, bartered
5 his password, if that's what the Court wants to call it, but
6 that doesn't make him anything more than a voyeur in this case.
7 And I think what the Second Circuit set up in Dorvee, to
8 contrast a voyeur being someone who looks at these images from
9 a predator or someone who would actually go beyond the images
10 is the important question. And nothing in the government's
11 submission changes the fact that Mr. Bennett was a voyeur, that
12 he was looking at these images, and there is nothing to suggest
13 that he went beyond that in the sense that he actually would
14 take any action or take any steps to create child pornography,
15 to manufacture it, to sell it, or the next step, to actually
16 entice a child, or meet a child, or hurt a child. There is
17 nothing that indicates that that was going on, or that would go
18 on, or that's something the Court needs to worry about in
19 factoring a sentence.

20 There were some reactions to his collection. People
21 asked him questions like, is that it? It's not a lot, it looks
22 commercial, which I take to mean like it's not homemade, like
23 you haven't made any of this stuff. And so I think in terms of
24 the gradations of what occurs in these types of chat rooms, as
25 I said, there's nothing that changes Mr. Bennett from a voyeur

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1 to something worse. He didn't manufacture these images, he
2 didn't sell them, he didn't buy them.

3 I don't want to minimize the content, and I don't want
4 to minimize the outrage that the Court feels that these images
5 exist, or that people watch them, but the fact of the matter
6 is, the hard part of sentencing is, we have to distinguish the
7 circumstances of Mr. Bennett's case from the circumstances of
8 other cases.

9 As I mentioned when we were talking about the -- well,
10 actually, I'm not sure I have to go over that again.

11 What I think is critical here, Your Honor, is
12 Mr. Bennett's response to law enforcement intervention. And
13 that, I think, is something that sets this case apart certainly
14 from any of the cases that were cited by the government in its
15 papers and even from most of the cases that were cited in our
16 papers, is Mr. Bennett's response to the police intervention,
17 and I think this is something that's highly relevant to the
18 appropriate sentence here.

19 As I mentioned, the initial search took place in
20 February of 2013, and as the Court can see from Exhibit F to my
21 sentencing submission, even before he was charged in the case,
22 even before he was charged with the crime, even before he had
23 an attorney, he was corresponding with the government over his
24 property that had been seized because my understanding is,
25 multiple devices were seized that did not contain child

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1 pornography. So as was his right, he was attempting to get
2 those back. And he said to them -- he described that the
3 search of his apartment had been a turning point in his life,
4 that he had to explain to his mother what he had done, and what
5 he had been doing, and that that was a nightmare. I cannot
6 imagine having a conversation like that with my mother. And
7 that he saw the intervention of the authorities as a blessing,
8 and he had made changes.

9 The government -- I'm not really sure what they're
10 getting at in the submission where they want to try to nitpick
11 that he didn't sort of write out a full confession that he
12 stuck to right from the beginning of the search. The important
13 thing for sentencing purposes is that he stopped looking at
14 child pornography. That's the important thing. That's what
15 this sentence largely has to be directed at, how can we deter
16 Mr. Bennett, how can he be rehabilitated, how can you protect
17 the public, all of those things.

18 THE COURT: There are other things, too. There's just
19 punishment. That's part of it, too. There are victims here,
20 and people possessing child pornography of such a violent
21 nature is a crime for a reason, right? It's not just about
22 Mr. Bennett's personal journey here, it's about punishment for
23 a crime that is an incredibly serious crime with real victims.
24 So just punishment is also part of the equation, right?

25 MS. CROSS-GOLDENBERG: Right. Just punishment, Your

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1 Honor, not just punishment. I mean not only punishment, right,
2 just punishment.

3 THE COURT: That's true, the transcript might be
4 confusing. A just punishment as in one that is just, yes.

5 MS. CROSS-GOLDENBERG: And I think that's kind of
6 where the guidelines here get lost, and I think that's kind of
7 where the government's submissions comes off the rails because
8 it just focuses on that somehow a lengthy jail sentence is the
9 thing here, but it's not tethered to any of the purposes of
10 sentencing. There's no reason to think that a lengthy jail
11 sentence leaves society safer, or provides better
12 rehabilitation, or provides better deterrence for anyone, or
13 promotes greater respect for the law, in fact.

14 So I think -- I'll talk a little bit more about the
15 guidelines and the types of sentences available, but I think
16 that's important to consider here, that it's impossible to
17 consider a just punishment without considering its effect on
18 Mr. Bennett.

19 THE COURT: Clearly. That's part of the equation. My
20 point was simply that there are other factors as well, not just
21 the ones that you mentioned.

22 MS. CROSS-GOLDENBERG: So, Your Honor, look, I know
23 the government attached not the notes, but the writeups of
24 Mr. Bennett's statements to the authorities. And, yes, when
25 his apartment was searched in February of 2013, that was about

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1 a week before he was scheduled to take the bar exam, and was he
2 freaked out, and was he candid, did he confess at that time?
3 He was completely freaked out, he was terrified, he panicked,
4 and he didn't come clean about what he had done. But that
5 doesn't, I think, in any way counsel toward how many months he
6 should spend in jail, because the key is, he didn't go back to
7 looking at child pornography, which is, of course, the behavior
8 that we're trying to avoid here. He did express his remorse,
9 as I said, when he wrote to the authorities regarding his
10 property.

11 Eight months later, when he was jolted out of bed on
12 the morning of his arrest, and his apartment was stormed over,
13 something that he thought was behind him -- understandably, it
14 had been eight months -- he hadn't done anything else wrong, he
15 hadn't heard from any authorities, yeah, he was, again,
16 disheveled and sort of freaked out, and, quite frankly, he was
17 treated very disrespectfully and rudely.

18 Now, I don't necessarily expect the Court or the
19 government to care about that, but --

20 THE COURT: Well, I care about it.

21 MS. CROSS-GOLDENBERG: -- in terms of his mental state
22 and his mindset at 6:00 in the morning, when the authorities
23 are storming his apartment, they didn't read him his Miranda
24 rights, they mocked him for being an attorney and said you
25 should know your rights. And, in fact, I know the government,

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1 as I said, included the typed-up 302s, but on the handwritten
2 notes, you can sort of tell, it's like squeezed in at the very
3 top of the page, like, oops, we forgot to say, we read him his
4 Miranda rights, so it's handwritten at the top of the page.

5 He was mocked as a Harvard graduate, and he was told
6 repeatedly by the agents how much pleasure the government was
7 going to take in bringing him down a notch and how everybody
8 was going to love to see his fall from grace. That was what he
9 was going through that morning. So, in that environment, did
10 he fully come clean? No.

11 And this was just a continuation of sort of the
12 rudeness that I think I talked about the last time we were here
13 that happened during the search, where -- and I apologize, but
14 I think it's necessary to put in context -- the agent said,
15 show us your dick, we have to compare it to the pictures we see
16 here, and then they said, ha ha, just kidding, we like to keep
17 it light. Okay, if we're talking about a person's mental state
18 at that point, right, I think it's understandable why there
19 aren't -- there's not a full expression of remorse.

20 But what I do think is interesting is that the fact
21 that he hadn't confessed his conduct ate at Mr. Bennett that
22 whole day, and, in fact, as is reflected in the government's
23 exhibit, he was the one who called the agents to his holding
24 cell and said I want to talk and admitted his conduct.

25 Now, there's certainly no requirement that a person

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1 confess on the day of their arrest in order to be deemed to
2 have accepted responsibility, certainly not before they've met
3 with an attorney or even been presented in court, but I think
4 what's really, really important about that day, the day of his
5 arrest in this case, is, as I said, what the government or what
6 the agents did not find in his apartment, which was child
7 pornography. They did not find any additional evidence that he
8 had reinstalled or, I guess, that he had installed GigaTribe on
9 his new computer, that he had downloaded it, or accessed it, or
10 viewed, or anything child pornography. And so that is
11 critical, because when you step back, and you say, okay, a
12 person who wasn't even charged with a crime went these eight
13 months not knowing he was being watched, not knowing -- not
14 being under the supervision of a court, that person was
15 deterred, was rehabilitated, continued to obey the law, and
16 then you throw in the arrest and the behavior that he
17 demonstrated for the 11 months following his arrest in terms of
18 complying with the terms of pretrial supervision, being on the
19 ankle bracelet, and not just -- I say complying, but really
20 thriving in a way that I continue to consider exceptional. He
21 had two jobs, he was working at two different higher education
22 institutions, and I attached some of the student and faculty
23 evaluations that he received to my letter, and he was excelling
24 in treatment. His treatment provider said that he was
25 really -- he was committed to it, and he was really making --

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1 he was really making strides at recovery.

2 And all of that -- he had 11 months to sort of
3 demonstrate that. The rug was pulled out from under him on all
4 of that on the day of his guilty plea and in ways that I think
5 contradict the goals of sentencing. He was forced to resign
6 from his jobs in the robing room back here, which was
7 completely gut-wrenching and probably precluded him from going
8 back to those jobs whenever he is released, because he wasn't
9 permitted to resign in a way that gave his employers any kind
10 of notice.

11 He had to leave his -- well, I'll get into that in a
12 second, but I want to focus on the treatment, which was
13 something that we talked about quite a bit that day, and it
14 wasn't the kind of situation, as we often see in these cases,
15 where someone is compliant to the extent that they attend
16 treatment, they show up when they're supposed to show up. And
17 I think that the reports, at least that we were able to get
18 from pretrial -- I don't know why we weren't able to get all of
19 them -- but the reports that we were able to get indicate that
20 he was excelling, thriving in treatment. And I think this
21 corresponds with Dr. Bardey's report, and it really underscores
22 what Dr. Bardey concludes when he told the Court that the
23 conduct at issue in this case was really a product of some
24 unresolved psychological matters that Mr. Bennett can address
25 through therapy, that there was no escalation in his behavior

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1 that would indicate that he is a danger to the community or to
2 anyone else, that his viewing of child pornography on the
3 computer, as serious as it is, was an end to itself, it was not
4 a window to any other kind of conduct, it wasn't a portal to
5 anything more dangerous, and that there is no evidence that he
6 poses a risk to anyone or that he himself is sexually
7 dangerous.

8 And I think that's critical, Your Honor, because
9 probation and the government both, without any basis, question
10 these findings. But they ignore the fact that Dr. Bardey
11 had -- he had the complaint in this case, which listed and
12 described the titles of some of these videos, and it's not a
13 situation where the complaint was sanitized, and it didn't
14 really get to the heart of what was there.

15 But, more importantly, they ignore the fact that
16 Dr. Bardey subjected Mr. Bennett to objective testing. So it's
17 not just like they sat down and had a conversation, and that
18 Mr. Bennett was somehow able to lie his way out of everything
19 important, and then Dr. Bardey reached this erroneous
20 conclusion, right. His report explains the testing, and the
21 procedures, and the objective measures, which the subject,
22 Mr. Bennett, who's taking the test, is unaware of how they're
23 being evaluated, so there's no way to sort of manipulate the
24 outcome of those tests.

25 And I think the argument that the government, and

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1 probation, and I think, to some extent, the Court in its
2 initial comments seem to be making is that based on the name of
3 the video or the content of the video that goes from bad to
4 worse -- it's all bad -- that that somehow reflects the length
5 of the jail sentence that a person should receive, and I think
6 that's just not borne out in science, in medicine, or in any
7 kind of theory of punishment. The issues --

8 THE COURT: I don't understand what the science of
9 just punishment is. The nature of the crime, the violence
10 depicted in the videos, seems to be relevant to the punishment
11 imposed. I'm not sure what science can add to that analysis.

12 MS. CROSS-GOLDENBERG: Well, in terms of the
13 appropriate sentence, Your Honor, so not just -- I guess my
14 point is that I think this is the kind of sort of hysteria that
15 led Congress to intervene in these guidelines and these
16 assumptions that if you look at this kind of video, that means
17 you're a risk, or that means you pose a danger of abusing
18 children, or you're a pedophile. That's where I'm talking
19 about the lack of science. It's just sort of a hysteria around
20 this stuff sounds really, really bad, you must be very
21 dangerous, and there's just no link there. And Dr. Bardey's
22 report, I think, to the extent that there is in some cases,
23 makes clear that there is no link in this case.

24 THE COURT: I didn't understand the government to be
25 suggesting that Mr. Bennett was a danger.

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1 Are you, Ms. Choi?

2 MS. CHOI: No, Your Honor. And I think a lot of what
3 Ms. Cross-Goldenberg -- and I don't mean to interrupt her -- a
4 lot of her arguments in submission to the Court were made to
5 the government in its evaluation of the charging decisions in
6 this case and led to the result that did occur here. The
7 government doesn't suggest that there is any evidence of that.

8 THE COURT: I just wanted to make sure. I didn't
9 remember anybody suggesting that.

10 So, anyway, go ahead.

11 MS. CROSS-GOLDENBERG: So, Your Honor, I think with
12 respect to the issues like recidivism, risk of recidivism, risk
13 of danger, that sort of thing, the content of the videos don't
14 shed any light on that, on those issues, and neither do the
15 titles, or even, quite frankly, the number of the videos.

16 So I think, to the extent that probation or the
17 government questions Dr. Bardey's report, there's really no
18 basis to do so. It sort of ignores not only the information
19 that he looked at, but the objective nature of his evaluation.

20 And I think, unfortunately, it's the same kind of like
21 reflexive, the stuff sounds really bad, you must be dangerous,
22 even if the government is not making that argument today, it's
23 that sort of thinking that led to Mr. Bennett's remand in this
24 case and that the Court felt constrained by Congress to remand
25 him.

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1 THE COURT: There's a law. There's a law that says
2 people -- the presumption is that they go to jail once they
3 have pled guilty to certain crimes, and it's more than a
4 presumption for certain crimes. So it's only truly exceptional
5 circumstances that would allow one to not be incarcerated
6 pending sentencing. We have already been through all that.

7 MS. CROSS-GOLDENBERG: My point, Your Honor, is that
8 that law, again, is not based on any actual reason to think
9 that Mr. Bennett is dangerous or needed to be remanded.

10 THE COURT: Well, that may be, but is your view that
11 Dorvee entitles judges to just override laws that they don't
12 like?

13 MS. CROSS-GOLDENBERG: No, Your Honor. I'm talking
14 about, as I said, the hysteria that surrounds these sort of
15 cases and the willingness to make a jump from, this stuff
16 sounds really bad; therefore, we have to get you off the street
17 and put you in jail, that's the way to deal with these cases.
18 And I think that's -- this case is a perfect example of why
19 that's actually counterproductive. So what we saw on
20 September 5th, when we were here for Mr. Bennett's guilty plea,
21 was that when he was remanded, as I said, he was forced to quit
22 his job, abruptly stop all mental health treatment, despite the
23 government's representation to the Court that he would continue
24 to receive mental health treatment while he was incarcerated,
25 he has received none. And, in fact, he didn't even continue to

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1 receive the same medication. The BOP, they had their own
2 formulary list of what medications they think people should
3 take, and that's all that happened. His medication was
4 changed, and he never received any treatment.

5 I think, Your Honor, in light of all of these nature
6 and circumstances of this case, the sentence recommended by the
7 guidelines is just completely out of whack with what happened
8 here, with who committed this offense, and with what he will do
9 in the future, and is far, far greater than necessary.

10 With respect to the guidelines, Your Honor, I don't
11 want to go over all the legal arguments. I know the Court has
12 read Dorvee, I know the Court has read my submission. I think
13 it's beyond dispute that this guideline, 2G2.2, is seriously
14 flawed. The Second Circuit cautioned that it can lead to
15 unreasonable sentences that actually contradict Section
16 3553(a)'s mandates, which is a point that I have been trying to
17 reiterate, and they're just not entitled to deference in this
18 case.

19 THE COURT: I never suggested that they were entitled
20 to deference, so they're certainly not entitled to deference.
21 Well, they are entitled to some consideration under 3553(a),
22 and under Supreme Court precedent, they're entitled to some
23 consideration, but they're not entitled to deference at all. I
24 get that.

25 And I've read Dorvee. I understand why some guideline

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1 sections are entitled to less consideration than others. I get
2 that, too.

3 MS. CROSS-GOLDENBERG: Right. And I think in this
4 case, Your Honor, it's clear that the guidelines are not
5 empirically based, that there's nothing, again, that tethers
6 these sorts of enhancements that were required by Congress to
7 any sort of a theory of punishment as to why this number of
8 months should correlate to this kind of enhancement.

9 And I think, as I mention in my letter, the
10 commission, in its expertise, when it set the base offense
11 level for this kind of case, it thought the base offense level
12 should be between six and ten, depending on different
13 characteristics. If you look at that, even putting aside
14 Mr. Bennett's acceptance of responsibility, a level 6 would
15 give us a guideline range of zero to six months, and a level 10
16 would give us a guideline range of six to twelve months.

17 THE COURT: Right. But that's with no enhancements,
18 though. You can't have it both ways. You can't say that the
19 commission suggested a base offense level of this, and so we'll
20 take that and disregard any enhancements that would have
21 otherwise been applied.

22 MS. CROSS-GOLDENBERG: Well, the enhancements, Your
23 Honor, are part of the problem. It's not just the base offense
24 level, but the enhancements, as the Second Circuit said --

25 THE COURT: I get that, but you're invoking the

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1 commission's base offense level for your purposes, but then
2 ignoring the rest of what they initially would have done and
3 then ultimately didn't do. But, look, I understand the point.

4 MS. CROSS-GOLDENBERG: But that's not exactly right,
5 Your Honor, because the commission didn't want to do these
6 enhancements. Congress told them they had to. This was the
7 only instance where Congress directly intervened and amended
8 the guidelines.

9 THE COURT: Your view is that the sentencing
10 commission believed that there should be a base offense level
11 of six to ten and nothing else for these kinds of crimes. Is
12 that what you're suggesting?

13 MS. CROSS-GOLDENBERG: Not necessarily that there
14 should be nothing else, but when you look at, as has the Second
15 Circuit said in *Dorvee*, the factors that lead to enhancements
16 in this case are the sorts of things that are inherent in the
17 offense. So should there be a two-level enhancement for using
18 a computer? No, because that's how people access child
19 pornography in this day and age. That is inherent in almost
20 every offense. Should there be an enhancement for, for
21 example, the sadomasochism, the four levels? No, that's
22 something Congress ordered them to do, and it is inherent, as
23 the Court said, essentially in every one of these kinds of
24 cases.

25 THE COURT: I don't agree with that, that it's

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1 inherent in all these cases, that there is a violent rape of a
2 child in which the child is penetrated by an adult while
3 screaming, and crying, and trying to get away? That's not
4 true. I've had enough of these cases to know that that's not
5 true in every case. That's not inherent by any means.

6 So there are different types of images that fall under
7 the header of child pornography, but some are clearly more
8 violent than others, and I can't say that it's unreasonable to
9 make a distinction between the truly violent and the other
10 types that don't involve overt acts of violence.

11 MS. CROSS-GOLDENBERG: Well, that's one thing, Your
12 Honor, but that's, unfortunately, not what 2G2.2 does. And in
13 my experience, that's not, you know, the government's position,
14 that if it's a child, it's inherently -- this is an inherent
15 characteristic because of the age of the child, and so I think
16 that's one of the things that the Second Circuit specifically
17 spoke to.

18 The third point I would make, and this is what I was
19 getting at earlier, is that's clearly exhibited in this case,
20 that a literal interpretation of 2G2.2 leads to the irrational
21 result where you cannot differentiate repeat offenders from
22 first time offenders, you cannot differentiate predators from
23 voyeurs, you cannot differentiate, as the Second Circuit says,
24 commercial distributors from the run-of-the-mill user. There's
25 no question here that Mr. Bennett is a run-of-the-mill user.

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1 Yes, he shared his password, as everybody else on GigaTribe was
2 doing, but he was not a commercial distributor, he did not
3 manufacture this stuff, he did not sell it, he did not create
4 it, he did not even fantasize about doing so, let alone talk to
5 people about how that might be possible or arrange to set up
6 meetings.

7 I think another example of this is that the Court sort
8 of did the math in terms of, again, the congressionally ordered
9 number of images, and there are 79 videos on Mr. Bennett's
10 computer, and then when you multiply that by the 75 images, you
11 get like 5,000 images, which makes it sound like there are
12 5,000 victims, right, which there weren't. It's not to
13 minimize what happened to the individuals in the videos and in
14 the images, but the difference of going from a couple of
15 hundred people to five or six thousand, it just makes it seem
16 so much worse. And, again, that's the highest level
17 enhancement that there is. So there's no way to differentiate
18 someone who's in Mr. Bennett's situation from someone who
19 actually had 6,000 videos with 6,000 different victims.

20 As I said, the guidelines, as the Court and the
21 government calculated them, leave us with a top of the
22 guidelines, four years over the statutory maximum, and I think
23 that just shows how we can't just apply them and pay them any
24 deference.

25 Your Honor --

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1 THE COURT: But there's a mandatory minimum that could
2 have applied here, right, in a case that has a longer statutory
3 maximum? So I think that's worth considering, that Mr. Bennett
4 could have been charged with a statute that had a ten-year
5 mandatory minimum, correct, Ms. Choi?

6 MS. CHOI: Your Honor, a five-year mandatory minimum
7 and the statutory maximum would go up from ten to twenty, Your
8 Honor.

9 THE COURT: Okay. So it's worth considering, but I
10 think I understand all this.

11 MS. CROSS-GOLDENBERG: So, Your Honor, this brings us
12 to the type of sentence that the Court can impose. And I think
13 3553(a) directs the Court to consider not just imprisonment,
14 but other types of goals of sentencing and outcomes of
15 sentencing, and I think Dorvee makes it clear in a case like
16 this, the Court can fashion a noncustodial sentence.

17 THE COURT: But Dorvee, just so it's clear, on remand,
18 got over ten years.

19 MS. CROSS-GOLDENBERG: And his conduct was very
20 different, I think, than the conduct here, but I'm talking
21 about in terms of the Court's authority. It's clear --

22 THE COURT: I'm certainly aware of my authority, no
23 question about that.

24 MS. CROSS-GOLDENBERG: And I think, Your Honor, the
25 Court -- again, in looking at the facts of this case and saying

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1 what gets us to the goals, what satisfies the ends of
2 sentencing, what gets us to the goals of 3553(a), the Court has
3 to take into account all aspects of the punishment that
4 Mr. Bennett has faced as a result of this case, because it's
5 not just jail time that can punish or reflect the seriousness
6 of a case or provide deterrence and the other factors. In this
7 case, Your Honor, Mr. Bennett voluntarily informed the Maryland
8 bar authorities of the charge and of his plea. He informed
9 them of the charge prior to his plea, and then informed them of
10 his plea. He consented to disbarment. He entered an order
11 with them consenting to that despite, again, the crushing
12 student loans that remain. He now will not be able to practice
13 as an attorney.

14 As I mentioned, his abrupt remand, his resignation,
15 leaving his students high and dry, leaving the institutions
16 where he was teaching high and dry --

17 THE COURT: Well, he didn't tell them of the charges,
18 right?

19 MS. CROSS-GOLDENBERG: Well, there was no requirement
20 that he do so.

21 THE COURT: Well, no, but the point is, you say he
22 told the bar about those things, but --

23 MS. CROSS-GOLDENBERG: Well, there's a requirement
24 that he do that.

25 THE COURT: I thought you said there was no

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1 requirement that he tell them about the charges, simply that he
2 tell them about the plea. Am I wrong about that? To the
3 extent he told people what he was required to tell them, I
4 guess I wouldn't entitle that to great credit, but to the
5 extent he told people things he wasn't required to tell them,
6 that would be -- I thought that was the point you were making.

7 MS. CROSS-GOLDENBERG: Right. With respect to the
8 bar, that he voluntarily -- it's not like they had an inquiry
9 and said tell us about this or what's happening in your case.
10 He reached out to me and said this was something he wanted to
11 initiate, and then we figured out a way to make that happen.
12 It took some time because I'm not an attorney in Maryland, and
13 I've never dealt with the Maryland bar council, but that was
14 something that was important to him that he do even before he
15 pled in this case.

16 Your Honor, another punishing aspect of that day in
17 September, I think, as we mentioned, Mr. Bennett's mother had
18 just left for a mission to South Africa, I think a church
19 mission to South Africa the morning of his plea, and he had to
20 just leave her a voicemail saying I'm going to jail, knowing
21 that she wouldn't get it for weeks until she returned to the
22 States and could access his voicemail.

23 It's not something I expect the Court to feel sorry
24 for him or for her about, but I think it is relevant, because
25 these are the kinds of things that can act as a deterrent to

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1 future misconduct, and they're the kinds of things that are
2 certainly not considered by the guidelines, and that's why I
3 think they're relevant.

4 Similarly, not even having had an opportunity to pack
5 up his own apartment, not being able to close his bank accounts
6 or take care of things that will hurt his --

7 THE COURT: I'm not sure why you keep saying he didn't
8 have these opportunities. The law was the law. It's not like
9 it got sprung on people the day of his guilty plea. So the
10 fact that he wasn't expecting it, I don't know what to say
11 about that, but certainly the law was unchanged for many years
12 before Mr. Bennett's guilty plea. He could have taken steps to
13 prepare for the at least possibility that he was going to be
14 remanded as the law requires. It seems to me you're trying to
15 argue that that shouldn't have happened, which I'm not sure why
16 it's necessary to do that at sentencing, but I think it's
17 taking us back to many of the arguments that were made on the
18 day of the plea.

19 MS. CROSS-GOLDENBERG: Your Honor, as I said, I'm not
20 asking the Court to feel sorry for him, and obviously the Court
21 can't go back and change its mind now, I'm not trying to
22 reargue it. What I'm saying is it is relevant, and it's the
23 kind --

24 THE COURT: You're saying he didn't have a chance to
25 do these things, and I guess I'm not persuaded he didn't have a

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1 chance to prepare his mother for this, or didn't have a chance
2 to pack up his belongings, or didn't have a chance to prepare
3 his employer for these things. He didn't do those things,
4 which made it more difficult, I suppose, after he was remanded,
5 but he certainly had a chance to prepare those things, he just
6 didn't, right?

7 MS. CROSS-GOLDENBERG: My point, Your Honor, is that
8 it made it more difficult after he was remanded. I don't want
9 to argue about whether he should have been remanded. We're
10 past that point.

11 THE COURT: I guess the issue you're making is that he
12 didn't have a chance to prepare for these things, and I don't
13 see how one can say that.

14 MS. CROSS-GOLDENBERG: Well, Your Honor, we discussed
15 with the Court dozens of cases where people had been left out
16 in much different circumstances. And even since Mr. Bennett's
17 remand, other judges in this district have left out defendants
18 in circumstances that were far less compelling.

19 So I think the fact -- the abruptness of his remand
20 and the problems that it caused are things that the Court can
21 consider, and I think they're clearly not considered by the
22 guidelines, and that's my point on those issues, Your Honor.

23 THE COURT: Okay.

24 MS. CROSS-GOLDENBERG: I think the 11 months of his
25 successful compliance, as I said, with treatment and pretrial

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1 services is critical, and it's perhaps the most frustrating
2 part about that remand, because the treatment is the thing that
3 actually has the potential to affect the goals of sentencing,
4 the rehabilitation, and actually further the other goals in
5 terms of allowing him to get through the issues that led him to
6 this place.

7 And so I think that's important. And to the extent
8 the Court, I guess, is looking for serious punishment, I think
9 it's appropriate to consider all of this stuff, that punishment
10 is not reflected in the number of months he spends in jail,
11 it's the entire context.

12 I'm going to wrap it up, Your Honor. When it comes to
13 the goals of sentencing, Mr. Bennett has been deterred. I
14 think he's demonstrated that, as I said, the 19 months before
15 his remand -- between the search and his remand. He's been
16 punished both by being incarcerated and in many other ways that
17 are not considered in the guidelines. He's demonstrated his
18 rehabilitation and that treatment can help going forward.
19 These are all things that protect the community and promote
20 respect for the law.

21 Your Honor, I think there are a number of other
22 sentences in this district where individuals with more
23 aggravating factors have received sentences of probation,
24 either people who have had child pornography found on their
25 computers again at the subsequent search to arrest, people who

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1 have fled the country after the initial search, people who have
2 been previously investigated for this type of conduct. And I
3 think -- I'm happy to go through the government's cases case by
4 case, but I know I've already spent a long time, what I want to
5 make clear, though, is the fact that so many people in this
6 district, the Eastern District and the Southern District, are
7 sentenced to sentences that are so far below the guidelines,
8 including probationary sentences, demonstrates that a
9 significant incarceratory sentence, as the government is
10 calling for, and certainly a guideline sentence are not
11 necessary to effect general deterrence because there are plenty
12 of other cases where individuals are sentenced to probation,
13 and that is found to be sufficient.

14 There is no reason to think that anyone other than
15 those of us in this room are going to know what Mr. Bennett's
16 sentence is. It's not like it's going to be broadcast on
17 GigaTribe. And so that the notion that somehow sentencing him
18 to more months in jail, despite the fact that he has been
19 specifically deterred, and he has been rehabilitated, there's
20 just no reason for that here.

21 In conclusion, Your Honor, I think it's clear to me,
22 and I hope to the Court, that this is not a case about a
23 predator, it's not a case about someone who intended to be a
24 predator or talked about being a predator, it's not a case
25 about a commercial distributor of child pornography, or about

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1 someone who manufactured child pornography, or sought out
2 victims, or created child pornography. This is a case about a
3 broken man, a man who was introduced to GigaTribe at the lowest
4 point of his life, and made the terrible decision to view child
5 pornography, and share it with others via his password. It's
6 also a case about redemption, and rehabilitation, and
7 deterrence, because the Court has heard evidence in the form of
8 Dr. Bardey's report, Mr. Bennett's postsearch conduct, that
9 show that a further jail sentence is simply not necessary here.

10 In light of all the 3553(a) factors, I think a
11 sentence of three years' probation is just and appropriate, and
12 any further jail time will be greater than necessary.

13 I know Judge Rakoff said in a white collar case, very
14 different circumstances, but that sentencing is the one time
15 where we really do -- sorry, where we really do consider the
16 full measure of a man, all of the good and all of the bad. And
17 the government says a couple times in its letter that
18 Mr. Bennett shouldn't get special treatment, and he's never
19 asked for special treatment. And I'm not asking for special
20 treatment on his behalf. All he's asking for is a full
21 consideration of all of the 3553(a) factors, of all of the good
22 and of all of the bad. And I think that a consideration of all
23 of his factors, Your Honor, leads to the conclusion that a
24 sentence of three years' probation is the just and appropriate
25 sentence in this case.

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1 And perhaps the argument that you shouldn't do these
2 when you're pregnant. I apologize.

3 THE COURT: No, I understand. You are an exceptional
4 lawyer and passionate about your clients and passionate about
5 the arguments you make. I have known you for a long time, and
6 I have the highest respect for you. That goes without saying.
7 I've said it many times, to the point where I probably do make
8 you blush, but that is the truth.

9 I do want to give the government an opportunity to
10 respond or to make points they believe would be relevant to
11 sentencing. So go ahead, Ms. Choi.

12 MS. CHOI: Your Honor, I'll be brief. I think most of
13 the concerns that the government had with regard to the
14 defendant's position have already been highlighted by the Court
15 itself. Obviously, all the things that Ms. Cross-Goldenberg
16 has said about Mr. Bennett are factors that should be taken
17 under consideration by the Court, but I think what's important
18 here is that not as much has been said about 3553(a)(6) and
19 (a)(5), which require the Court to determine whether or not the
20 defendant's request for a probationary period would lead to an
21 unwarranted sentencing disparity with regard to this defendant
22 as compared to others with similar records and that are guilty
23 of similar conduct and respect for the guidelines themselves.

24 Now, Your Honor, I want to make clear that the
25 government has never taken the position that the defendant

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1 either manufactured, sold for pecuniary gain, or bought child
2 pornography. We have no evidence that he has touched a minor.
3 If that were the case, he certainly would not have had the
4 benefit of the discretionary decision by this office to allow
5 him to plead to a nonmandatory minimum sentence, to allow for a
6 statutory cap of ten years upon his sentence in lieu of the 20
7 years. We would have applied other statutes which also carry
8 with them other guidelines calculations under those
9 circumstances.

10 But I think -- at its heart, I think the defendant's
11 arguments boil down to he's a voyeur and not a predator, which
12 I think for reasons the Court has already explained, doesn't
13 quite encapsulate the nature of these particular videos under
14 these circumstances. And to be clear, these are videos the
15 defendant chose to download in the first instance by selection
16 by title. And I think the titles are illustrative about the
17 type of abuse, the age of the victims that were abused, the
18 reactions in terms of pain and what was done to these
19 particular children, and those are serious considerations, Your
20 Honor, that you should take into account, especially because
21 this is not a situation where Mr. Bennett didn't have all of
22 the -- Mr. Bennett clearly has a network of people who support
23 him, he's an intelligent individual, I think he knew at the
24 time he was doing them what he was doing was wrong, and he,
25 nevertheless, chose to look at those videos, chose to share

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1 those videos with others on the Internet, and thus, distribute
2 them widely.

3 And I think the Second Circuit's decision in Ryan
4 Gold, which postdates Dorvee, explains why, in the distribution
5 context, there is a specific need for a deterrent effect and
6 why incarceratory sentences are important here, as reflected by
7 Congress' decisions with regard to the guidelines and the
8 statutes, because there is a societal interest in ensuring that
9 this type of behavior does not continue, to not continue to
10 perpetuate a market in which these videos are easily accessible
11 to others, and where that type of victimization can continue.

12 And I think, Your Honor -- I don't mean to belabor
13 this, this is also in the government's submission -- but with
14 regard to the chats and what he did on GigaTribe, I just would
15 like to highlight the fact that the chats that you see are only
16 for November 9th of 2012 to February 6th of 2013, that the
17 defendant himself admitted that he had been doing this for
18 about a year prior to the execution of the search warrant, and
19 that he would install and dis-install GigaTribe at various
20 points.

21 So during that period of time, he traded with at least
22 174 different users of GigaTribe. This is not a one-off
23 situation where -- as Ms. Cross-Goldenberg noted, it wasn't as
24 though he took one email, sent a video once, and that was the
25 end of it. This was a continuous course of conduct that

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1 existed.

2 Just briefly, Your Honor, with regard to the response
3 to law enforcement's intervention and what Ms. Cross-Goldenberg
4 explained were the effects of his arrest, I would note, Your
5 Honor, I have not spoken to the agents with regard to the
6 specific allegations that Ms. Cross-Goldenberg has raised. I
7 did discuss with them at the time what had happened. I don't
8 believe that there to be anything that occurred during the
9 course of that arrest is different in terms of the execution of
10 that arrest -- the execution of that arrest versus other
11 individuals, but I would say this: Defendants are arrested in
12 these types of cases at 6 o'clock in the morning, that's how it
13 is. I think there is no reason to believe, at least from the
14 government's perspective, that Mr. Bennett doesn't understand
15 or appreciate his offense conduct now that it's been fully
16 briefed, that he's had time to consider what has happened, but
17 I will say that, as the government notes, there were certain
18 statements that Mr. Bennett made even after his confession and
19 his expressions of remorse to the agents in the context of
20 signing his bond in Magistrate's Court, where the case agents
21 weren't there, and it was another agent who witnessed these
22 statements, and I think that moment of candor reflects upon or
23 at least draws into question whether or not the actual arrest
24 itself or the execution of the search warrant had the needed
25 deterrent effect.

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1 And, Your Honor, there's deterrence not only just to
2 this particular individual, but to the societal message that
3 would be given. I think, as set forth in the government's
4 submission, significant incarceratory sentences are the norm in
5 these types of cases. I think I've laid out the average
6 sentence that's imposed for people with no Criminal History
7 Category, with the same guidelines calculations, which would
8 mean similar conduct as that of the defendant.

9 THE COURT: I've forgotten. What did you say?

10 MS. CHOI: Yes, Your Honor. One moment.

11 I think it's on pages 17 to 18 of the government's
12 submission, which draws from a 2012 Sentencing Guidelines
13 commission report, which indicates two sets of defendants
14 nationwide that had been sentenced to child pornography cases
15 in circumstances that are analogous to this. One set is with a
16 two-point enhancement, one is with a five-point enhancement
17 that we went through with regard to the type of distribution.
18 And, also, it divides up in terms of defendants that pleaded
19 guilty only to the possession count versus those that also pled
20 guilty to the distribution count.

21 I think the analogous point here is that there are 40
22 defendants that were convicted of possession, but had the
23 five-level enhancement for distribution, the average sentence
24 there was 79 months, Your Honor. That's not a probationary
25 sentence.

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1 And I think many of the professional consequences that
2 were attendant to Mr. Bennett's offense conduct here sort of
3 highlight the fact that Mr. Bennett is -- unlike a lot of
4 defendants that Your Honor sees and that we deal with day in
5 and day out in the court, he had the benefit of a support
6 system in his mother and his family, he had the benefit of an
7 excellent education, many things that are not available to
8 other defendants. And for the very reasons why other
9 defendants should not be more punished as a result of their
10 lack of those opportunities, it shouldn't be the case that
11 Mr. Bennett should somehow be able to say that because of the
12 professional consequences, that was sufficient to mean that he
13 should not have any incarceratory sentence.

14 I don't know if Your Honor has any further questions
15 of the government, I'm happy to answer them, but I think the
16 rest of the government's position is set forth in its
17 submission.

18 THE COURT: No, I don't have any other questions.

19 Mr. Bennett, we have all been talking about you quite
20 a bit, but, as I said, you have a right to address the Court if
21 you'd like to. You're not required to, but you certainly are
22 welcome to.

23 THE DEFENDANT: Your Honor -- I'm sorry.

24 THE COURT: That's all right.

25 THE DEFENDANT: There's a few things I just want to

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1 say very quickly.

2 The first thing that I want to say is that I'm very
3 disappointed in myself. I'm disappointed because I have to
4 stand here with my family behind me. My mother gave so much to
5 me. I don't want her to think this is how I'm going to repay
6 her. I know this is not what my statement should be about, but
7 I want my mother to know that there's nothing different she
8 could have done, she gave me everything I could have ever asked
9 for. I did this. I knew when I did it, that it was wrong. I
10 apologize to my mother. I will get out one day, and I want her
11 to know that I'm sorry. This is not a reflection on her
12 parenting, this is not a reflection on anything that she could
13 have protected me from or shielded me from.

14 I want to apologize to Ms. Choi for being a part of
15 this. To really just be candid, I want to apologize for even
16 what I said afterwards. Your Honor, perhaps I deserve it, but
17 there were a lot of things that were said about my background,
18 about what they would do to me in prison, about how far I had
19 fallen and how much of a disgrace I was, about who goes to
20 Harvard Law School and comes out and does this, and I reacted
21 on that.

22 I know that I've done wrong. I'm embarrassed because
23 I did have the chance to go to schools like that, and I know
24 that there are other people who probably deserved it more than
25 me and would have probably made more out of it. One day I know

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1 this will get back to both Morehouse and Harvard, and I want it
2 to be known that I was flawed before I even went there, and
3 those degrees didn't change that and only masked it to some
4 degree.

5 I apologize to the girls and boys who I watched in
6 those videos. They were disturbing -- I can't say anything
7 otherwise -- what the images represented, what they were. I
8 thought -- stupidly, but I thought somehow in my mind I knew I
9 would never cross the line of soliciting or touching any of
10 them. I never even had the fantasy to. I never even
11 thought -- even knowing it was wrong, I never thought I could
12 get in this much trouble. I could be facing -- what did you
13 say, 14 years?

14 I'm sorry, Your Honor, I did write a couple of things.

15 I want you to know that I would do anything to take
16 back what I did. I stopped all involvement with child
17 pornography the day that the search warrant came, the day they
18 raided my house, the day, Your Honor, I honestly thought they
19 had the wrong person. They came in with guns and bulletproof
20 vests. I thought they were looking for someone who had died.
21 It wasn't until she said, what do you know about child
22 pornography, that I realized it was me that they were looking
23 for. At that moment, I realized just how serious it was. Guns
24 drawn?

25 I never even had a desire to look at it afterwards.

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1 This happened in February of 2013. I know regardless of what
2 the sentence is today, I'll never return to it again. I can't
3 even come close to it. I want you to know that my life has
4 been -- Your Honor, has been very blessed, but it's been very
5 conflicted. I've read Ms. Choi's statement to you about this
6 sentencing guideline, and there was one sentence that really
7 stuck out to me. She said that it's hard to reconcile my
8 background replete with academic success and overcoming the
9 challenges in my life with my behavior, and I have overcome
10 many challenges. Most, and not all of them. I wouldn't be
11 here before you today, Your Honor.

12 There are some things that have happened to me in my
13 childhood physically and sexually that I've never spoken about
14 ever to anyone, and there's nothing anyone could have done to
15 shield me from it. It's not an excuse for what I looked at,
16 for what I did, I take responsibility for that. But I want you
17 to know, Your Honor, that outward success, no measure of it
18 signals the absence of pain on the inside. My smile in many
19 ways was masking what was going on on the inside, hurt that I
20 had for so many years, shame from things that happened that I
21 couldn't talk to anybody about.

22 It's clear from my past behavior that something was
23 completely out of whack. There was a disconnect between what I
24 knew to be right and what I did. And I didn't meet any of
25 these people that I gave my password to. I didn't even know

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1 them, it's an Internet relation, and within seconds, I'm giving
2 them the password, and I look back, and I say, what was I
3 doing?

4 I destroyed everything that I worked -- I can
5 remember, Your Honor, the day I decided to be a lawyer at 15,
6 and I destroyed it all. For what? For what gain? For moments
7 of self-gratification, not even minutes. I destroyed years of
8 promise and potential. I did this, and I take full
9 responsibility for it.

10 Your Honor, for the 11 months that I've been in
11 therapy before and these four months -- I'm coming to a close,
12 Your Honor.

13 THE COURT: No, it's all right. I'm not rushing you,
14 I was going to get some tissues for your mother, if she needs
15 some.

16 THE DEFENDANT: For the 11 months that I was in
17 therapy and the four months that I was in jail, I had a lot of
18 time to do a lot of thinking, not just about what I was drawn
19 to, but what I was running from. And I was running from
20 serious insecurities and deep set inadequacies, feelings of
21 being unworthy, and the harsh, but real realization that
22 achieving certain things just didn't make me feel how I thought
23 they would. This entire ordeal has made me deal with things
24 that I never wanted to talk about, things that I promised
25 myself I would never speak about, and I buried, but now I have

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1 to deal with, and I have been dealing with.

2 Lastly, Your Honor, I want you to know I don't even
3 know a word in the English language for it, but the irony, the
4 irony in all of this is that in the past, when I would write
5 books and give speeches about -- to uplift people, it was never
6 about look how great I am, follow me, I talked about my
7 struggles, about the things that I've fallen from, how I was
8 able to get back up and how others can too, no matter how far
9 we fall, we still have a purpose, and even in this place right
10 now, regardless of what the sentence is, I know that I have a
11 purpose.

12 And this is a message I've been sharing even in the
13 jails that I've been in, and when I get out, whenever that is,
14 I will continue to share it. I would have rather this didn't
15 happen, and I listened to my inner voice sooner, but this, too,
16 will be used to inspire. This journey, this two-year journey,
17 has changed my life forever.

18 Regardless of where I am, I'll be 30 next year, and I
19 am a new creature. All things have passed away, and old and
20 all things have become new. This much, I'm certain of: He who
21 began a good work in me will continue it until the day of
22 redemption.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you, Mr. Bennett. Do
25 you need a minute just to catch your breath?

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1 THE DEFENDANT: I'm fine, no.

2 THE COURT: Do you have a tissue or something?

3 THE DEFENDANT: Yes.

4 THE COURT: All right.

5 Catch your breath. Let me tell you the sentence that
6 I intend to impose and my reasons for it.

7 In our system, judges have to give reasons, and I
8 think that's a good thing, it's a good thing because a
9 defendant shouldn't have to wonder what was going through a
10 judge's mind, nor should the defendant's family, who's
11 tremendously affected by a sentence, nor should the public.
12 That's why we have public proceedings, that's why we have court
13 reporters that make a record of everything that takes place.
14 And so judges have to give their reasons, and I'll endeavor to
15 do that now.

16 I've told you the different factors I have to
17 consider, and the hardest thing about being a judge are days
18 like this, imposing a sentence on another human being, a
19 complicated human being, a decent human being, somebody with
20 tremendous good qualities, somebody who's done many good things
21 in life, and I start with that because I want to make clear
22 that I understand that about you. I look at your family, it's
23 heartbreaking to see what they're going through, and your
24 friends. You've touched a lot of lives, and that's reflected
25 in the letters that I've received, it's reflected in who's here

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1 today, and they're suffering along with you. I wish that
2 weren't the case. I wish there was some way I could make it go
3 away, but there really isn't. It's the nature -- it's really
4 the nature of the human condition in a lot of ways, that we're
5 all connected to each other. It's the nature of this process,
6 where punishment, which has many different objectives, does
7 have a cost on people, good people.

8 So I understand that about you, and so -- I mean, I
9 don't know you well, I know what I've read about you, and I've
10 read a lot, and I've given it a lot of thought. You strike me
11 as a person with real ability, of course, that's obvious, and
12 somebody who cares about other people and has done much to help
13 others. I think that's obvious too. So I credit that.

14 I also credit what you have done since you were first
15 approached by agents in this case. You haven't gone back, as
16 far as I can tell, to any kind of pornography, child
17 pornography in particular. You've been law-abiding since then.
18 You were law-abiding in all other respects before your arrest.
19 You've taken treatment seriously, you've taken thinking about
20 what you've done seriously. You seem to have a healthy
21 remorse, which I think is a good thing and a sign of health.
22 So I credit all those things, too. Not everybody does have
23 those things, but you've demonstrated them, and so I consider
24 that. It's not something I've overlooked.

25 But there are other, of course, things I have to

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1 consider. I have to consider the enormity of this crime. And
2 as I've read these letters, as I've listened to the lawyers
3 speaking, I keep coming back to the fact that this is -- as
4 Ms. Cross-Goldenberg, who I have the greatest admiration for,
5 said, this is not a case about a predator, it's not a case
6 about a manufacturer, it's not a person who was engaged in
7 distribution for money, all true, it's a case about a broken
8 individual. I guess that's true, also. But it's also a case
9 about children. It's a case about children who were exploited
10 and brutalized, and who were then brutalized again by callous
11 people, individuals who watched their suffering and ignored
12 their humanity. There's just no way of getting around that.

13 So Ms. Cross-Goldenberg has asked me to consider the
14 entirety of your personhood, and of course, I do, and I have,
15 and I will. That goes without saying. I meant everything I've
16 said about you. But that's not something you did when you
17 observed these children. You didn't think about their
18 humanity. You didn't think about, oh, my goodness, this is a
19 ten-year-old child in pain. You didn't think about what it
20 would mean to that ten-year-old child ten years later to know
21 that people were sharing this, and passing it on, and accessing
22 it with a password that was fun, that was the password that
23 accessed this. That's part of this crime, too. And that's why
24 the penalties associated with it are high, and I think
25 appropriately high. I'm not blindly following this book. I

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1 couldn't give a damn about this book. It's something I have to
2 consider. There are times I think it makes sense, there are
3 times I think it doesn't.

4 But this is a serious crime. And I don't care what
5 the Second Circuit says or what the Guidelines Commission says,
6 I certainly think it's a serious crime. I think that this goes
7 to the heart of what a society is supposed to be, which is to
8 protect the most vulnerable and to at least voice outrage when
9 the most vulnerable are exploited and brutalized. If we don't
10 do that, if we can't muster that sort of conviction, then we
11 should give it up. That's why this is a serious crime, as far
12 as I'm concerned.

13 You didn't make money off of this, but I don't know if
14 that is better or worse than sharing it for fun, because each
15 ignored the humanity of the children involved here. There have
16 to be penalties for this. This is not just about your own
17 personal journey. I care about what happens to you in the
18 future. I really do. You matter, you're precious. Your
19 mother and everybody here, including me, thinks that you are
20 special. You are that, so that goes without saying. But there
21 has to be a punishment component to this. There has to be some
22 reflection of what took place here, what the crime was. And I
23 think Ms. Cross-Goldenberg and I, as much as I respect her and
24 I hope she respects me, I think we just differ on this,
25 because, for me, this is a crime that has to carry a jail term

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1 and a lengthy one, a lengthy one.

2 The maximum here is ten, the guidelines are 11 to 14.
3 I'm not moved by that. I think it's worth noting just because
4 I'm required to note it, but from the moment I read the facts
5 of this case, it seemed to me that eight to ten is not
6 inappropriate, 11 to 14 is not inappropriate. It's not that
7 I'm callous, it's not that I have no sense as to what that time
8 means to a young man like you who has so much promise, but it's
9 that the penalty has to send a message of moral outrage and a
10 message of conviction that children matter.

11 So, look, I have to credit the goodness in you. The
12 fact that I don't think you're a predator, you are
13 distinguishable from many other defendants who are charged with
14 crimes like this, I'm prepared to come down below the
15 guidelines, down below the statutory maximum of ten, which
16 would be within the guidelines range, but it seems to me that a
17 sentence of seven years is as low as I can go without insulting
18 the victims in this crime. And I know that's hard on the
19 family, it's hard on you, that's not lost on me, but those are
20 not the only considerations here, and I hope that at least you
21 can understand that, even if you don't agree with it.

22 So the sentence that I intend to impose is a sentence
23 of seven years' incarceration, to be followed by a term of
24 supervised release of five years with the terms and conditions
25 set forth in the presentence report. I'm not going to impose a

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1 fine. I don't think you have the ability to pay a fine at this
2 point. I will order a special assessment of \$100.

3 Restitution, I'm going to put off for at least 90 days to
4 figure out what the parties have to say in response to what
5 submissions we received from the victim in this case -- one of
6 the victims in this case.

7 That's the sentence that I intend to impose. Is there
8 any legal impediment to my imposing this sentence, Ms. Choi?

9 MS. CHOI: No, I don't believe so, Your Honor.

10 THE COURT: Ms. Cross-Goldenberg?

11 MS. CROSS-GOLDENBERG: No, Your Honor. Just the
12 objections that I've already raised to such a sentence.

13 THE COURT: Right. I meant really legal impediment in
14 the sense that I am engaging in illegal conduct or something
15 barred by statute.

16 MS. CROSS-GOLDENBERG: I did want to address a couple
17 of conditions about supervised release. I don't know when the
18 Court would like me to address it.

19 THE COURT: Do that now. That's fine.

20 MS. CROSS-GOLDENBERG: Just with respect to treatment,
21 Your Honor, obviously we -- as I've said many times, treatment
22 seemed to be working well, and we would hope that he will
23 continue that. But I would ask that the Court not impose a
24 condition of polygraph testing as recommended by probation, and
25 if the Court wants me to write on that or put it in more

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1 detail, I'm happy to do that. But I think there's been no
2 showing that those are reliable or fair, and many courts have
3 declined to impose that condition.

4 I would also ask that his records be released to
5 defense counsel. We have --

6 THE COURT: Records?

7 MS. CROSS-GOLDENBERG: The treatment records, Your
8 Honor.

9 In my experience, treatment providers maintain the
10 position that they belong to probation and not to Mr. Bennett,
11 and without the Court's authorization, will not release them to
12 defense counsel. So we would ask that the Court do that.

13 THE COURT: All right. With respect to the last one,
14 the records, I don't have any objection to that. I'll give the
15 government a chance to be heard.

16 Ms. Choi, do you have a position?

17 MS. CHOI: No, the government has no position on the
18 treatment records being released to the defendant, Your Honor.

19 THE COURT: So that's fine.

20 And then with respect to the polygraph, does the
21 government have a position with respect to that?

22 MS. CHOI: Maybe I'm just missing it, Your Honor, or
23 Ms. Cross-Goldenberg, if you could direct me to where that
24 provision is?

25 MS. CROSS-GOLDENBERG: It's on page 25, the fourth

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1 line under condition 1.

2 MS. CHOI: Your Honor, I was wondering if there is any
3 way you could reserve decision on that question. I don't know
4 what the reason for it is. My understanding is that it's a
5 standard condition in these cases, but I would like the
6 opportunity to respond or at least consult with my chief on
7 that question.

8 THE COURT: All right. I'm respectfully going to
9 decline that request. I'm going to include that as a
10 condition, but I'll leave it to the discretion of probation,
11 and if they think it's not appropriate or not necessary, then I
12 will defer to them.

13 If during the course of supervision, Mr. Bennett
14 wishes me to revisit that, that's something that can always
15 happen during the course of supervision. But for now, I'm not
16 going to read it out of the conditions at this time. I reserve
17 the right later to adjust it as necessary.

18 And then with respect to a facility, do you have any
19 recommendations?

20 MS. CROSS-GOLDENBERG: Your Honor, if the Court could
21 recommend that he be housed by the BOP in a location as close
22 to Newport News, Virginia, as possible to facilitate visits
23 with his family, we would appreciate it.

24 THE COURT: I will certainly make that recommendation.

25 So let me ask you, if you would, please, to stand,

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1 Mr. Bennett.

2 Mr. Bennett, having accepted your guilty plea back in
3 September and having adjudged you guilty at that time, I now
4 sentence you as follows: I sentence you to a term of
5 incarceration of seven years with credit for the time you
6 already served, so that's 84 months. In addition, that will be
7 followed by a term of supervised release of five years. That
8 term of supervised release will include the following mandatory
9 standard and special conditions: The mandatory conditions are
10 that you not commit another federal, state or local crime; that
11 you not illegally possess a controlled substance of any kind;
12 that you not possess a firearm or a destructive device of any
13 kind; and that you cooperate in the collection of DNA as
14 directed by the probation officer.

15 I'm not going to require you to undergo drug treatment
16 or testing at this point. I'm going to have some specific
17 special conditions that may include that. I'm not going to
18 otherwise require you to get mandatory drug testing, which is a
19 typical mandatory condition.

20 There are 13 standard conditions. Those are imposed
21 in virtually every case involving supervised release. I'm
22 going to impose those, too, here, but I'm also going to impose
23 some additional special conditions. The special ones, that you
24 shall undergo a sex offense specific evaluation and participate
25 in a sex offender treatment and mental health treatment program

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1 approved by the probation officer, you shall abide by the
2 rules, requirements and conditions of that treatment program.
3 That program may include submission to polygraph testing.

4 You shall waive your right to confidentiality in any
5 records for mental health assessment and treatment, so that
6 those records can be shared with probation, and so that
7 probation can also share information with the treatment
8 provider. I'll expect or direct that you participate or
9 provide some -- that you contribute to the costs of this
10 program, if you can. So if you're earning enough money, if
11 you've got access to insurance, I'll ask you to help defray the
12 cost of that program. If you don't have enough money, if you
13 don't have insurance or other ways to cover the costs, then the
14 Court will bear the costs because it's important that you get
15 that treatment.

16 In addition, you will participate in a computer
17 Internet monitoring program administered by the probation
18 office. You shall provide the probation officer in advance
19 with notification of any computers or other devices that you
20 are using or have access to, including any access to the
21 Internet. The probation officer is authorized to install
22 monitoring devices at a monthly rate provided by the probation
23 office. That will be subject to periodic adjustments. You
24 will be notified -- probation shall be notified of any
25 impermissible, or suspicious activity, or communications that

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1 occur over the computer or the device. And so all of this is
2 set forth on page 25, but that's a condition that I expect that
3 you will comply with, okay?

4 Examination is not limited to retrievable and copying
5 of data from the computers or devices. It may involve removal
6 of equipment for the purposes of conducting a more thorough
7 search so they can search and inspect as needed.

8 A third and special condition is that you will submit
9 your person, your property, your home, your residence, your
10 vehicle, your papers, computers, any other devices that you
11 have, to a search in the event that the probation officer
12 believes that there may be evidence of a crime or evidence of a
13 violation of the terms of your supervised release. That search
14 will have to be conducted in a reasonable manner and at a
15 reasonable time, but you are required to comply with the search
16 request. You can't just deny probation the opportunity to
17 search, that would be a violation of the terms of your
18 supervised release.

19 You are also to notify any person with whom you share
20 premises or control premises to let them know that you're
21 subject to this search requirement. This is so they can take
22 steps to protect their own privacy. So you do have to let any
23 adults with whom you reside know that.

24 And then finally, you'll participate in a program
25 approved by the probation office, which may include testing to

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1 determine whether you are using drugs or alcohol. Again,
2 you'll be expected to help defray the costs of that program if
3 you have access to insurance or you have the ability to help
4 pay for the program.

5 And I will also authorize the exchange of evaluations
6 between probation and the treatment provider and vice versa.

7 You are to report to the nearest probation office
8 within 72 hours of your release -- I'm going to say 24 hours
9 within your release from custody. You will be supervised in
10 the district of your residence.

11 Do you know where you plan to live?

12 THE DEFENDANT: Seven years from now, sir? No, sir.

13 THE COURT: All right. Well, wherever you end up,
14 that will be where you're supervised.

15 THE DEFENDANT: Okay.

16 THE COURT: It will probably be this district first,
17 and then if we need to transfer it, we can do that. Some
18 people know exactly where they're going to be on release.

19 As I said, I'm not going to impose a fine. I will
20 impose a special assessment of \$100, and I'm going to reserve
21 on restitution.

22 Are there open counts?

23 MS. CHOI: No, Your Honor.

24 THE COURT: All right.

25 So I should tell you, Mr. Bennett, you have a right to

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1 appeal this sentence. So if you wish to appeal, you would need
2 to file a notice of appeal within two weeks. I think probably
3 two weeks from Monday, because I don't think I'll probably get
4 the judgment out till Monday. So that's a pretty strict
5 deadline, so you'll need to file that within two weeks. It's
6 not the whole appeal, it's not the beef, it's just a notice of
7 appeal.

8 Talk to Ms. Cross-Goldenberg, she'll explain that, and
9 she will assist you in filing it. The fee would be waived for
10 you, so you don't have to worry about a filing fee, okay?

11 THE DEFENDANT: All right.

12 THE COURT: Are there any other issues we should
13 resolve today?

14 MS. CHOI: Two issues, Your Honor. If the Court could
15 inform the defendant of his obligations to report under the Sex
16 Offender Registration and Notification Act?

17 THE COURT: Okay.

18 You should understand, Mr. Bennett, that you have
19 obligations under the law to register as a sex offender under
20 the Sex Offender Notification Act, however the term is defined.
21 There are federal and state statutes that relate to this, so
22 you have an obligation to do that. That will be part of your
23 supervised release, really, because to fail -- your failure to
24 do that would be another crime, and so be mindful of your
25 obligations in that regard, okay?

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1 Anything else?

2 MS. CHOI: Your Honor, sentencing practices require
3 that the parties submit an unredacted version of the sentencing
4 submission to be filed under seal. With regard to the
5 government, we've marked the pages that we believe we will
6 redact, and we will post our redacted version on ECF, Your
7 Honor.

8 THE COURT: Okay. So you have sent me the unredacted?

9 MS. CHOI: Yes, Your Honor.

10 THE COURT: And you've got now the redacted?

11 MS. CHOI: I have the redacted, I've reviewed it with
12 Ms. Cross-Goldenberg, and she agrees with the redactions that I
13 have proposed.

14 THE COURT: You're going to hand them up?

15 MS. CHOI: I'm handing you the copy that should be
16 sealed.

17 THE COURT: Okay. Thank you. I'll take a look.

18 MS. CHOI: It's the same as what Your Honor has
19 already.

20 THE COURT: Oh, okay.

21 Ms. Cross-Goldenberg, anything else we should cover
22 today?

23 THE DEFENDANT: Is there a way that you would allow
24 me, before I leave, to just be able to hug them before I leave?

25 AUDIENCE MEMBER: Please.

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1 THE COURT: I think I probably can't. The marshals,
2 I'm afraid, won't allow that. Mr. Bennett, it's not that I
3 don't trust you, it's just that the marshals have --

4 THE DEFENDANT: My mother, you're saying? Because she
5 just came from --

6 AUDIENCE MEMBER: I haven't seen him. Please, Your
7 Honor, just let me hug my baby.

8 THE COURT: I'm afraid I can't do that just because
9 the marshals have procedures that they have to follow.

10 THE DEFENDANT: I understand. Thank you, sir.

11 THE COURT: No, I'm very sorry.

12 THE DEFENDANT: That's fine. I understand, sir.

13 THE COURT: All right. Mr. Bennett, that's a tough
14 sentence, it's a hard thing for you and your family. I
15 understand that, and I really am sympathetic. I mean what I
16 said, which is that I think you're a young man, you've got a
17 bright future, and I agree with what you said before, you will
18 rise from this. This doesn't define you. There is a great
19 deal to you, and so my hope is that you will continue to
20 realize that and to explore that, and that you will be a source
21 of comfort and inspiration to people even while you're in
22 custody. And, in fact, people in custody are often the most
23 vulnerable in our society, so you can do great things for
24 people who are in need. I hope you'll do that.

25 I hope you'll continue to be there for your family,

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1 even though you may be separated from them.

2 And for those who are here today, I hope you will
3 continue to support Mr. Bennett. He's going to need that
4 support as much as ever, and so I hope that that will continue.

5 Thanks for being here today. It's a very hard thing
6 on a family, it's a very hard thing on people who are close to
7 the individual being sentenced. It's a very hard thing. Even
8 if you disagree with the sentence, I hope that at least you
9 leave here believing that it was a careful sentence. It was
10 not vindictive, it wasn't meanspirited, it was just an endeavor
11 on my part, as best that I can, to use the judgment that I've
12 been entrusted with.

13 So good luck, and thanks very much.

14 Let me thank the marshals, and let me thank the court
15 reporter as well. Have a good day.

16 * * *